No. 02-1580 Status: GRANTED
Title: Richard Vieth, Norma Jean Vieth, and Susan Furey, Appellants
v.
Robert C. Jubelirer, President of the Pennsylvania Senate, et al.
Docketed: April 30, 2003
Lower Ct: United States District Court for the Middle District of Pennsylvania
Case Nos.: (1:CV-01-2439)
Decision Date: January 24, 2003

~~Date~~	~~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~~~~~
Apr 25 2003	Statement as to jurisdiction filed. (Response due May 30, 2003)
May 30 2003	Motion to affirm filed by appellees Robert C. Jubelirer, et al.
May 30 2003	Motion to affirm filed by appellee Rendell, Knoll, Cortes and Accurti.
Jun 9 2003	Brief of appellants Richard Vieth, et al. opposing motions to affirm filed.
Jun 27 2003	PROBABLE JURISDICTION NOTED.
Jul 14 2003	Extension of time within which to file the joint appendix and petitioners' brief on the merits to and including August 29, 2003.
Aug 27 2003	Brief amicus curiae of Political Scientists Bernard Grofman and Gary Jacobson filed.
Aug 28 2003	Brief amicus curiae of The Democratic Leader of the Senate of Pennsylvania filed.
Aug 29 2003	Letter of appellants proposing a lodging.
Aug 29 2003	Brief amicus curiae of Center for Research into Governmental Processes, Inc. filed.
Aug 29 2003	Brief amici curiae of Jack N. Rakove, et al. filed.
Aug 29 2003	Joint appendix filed.
Aug 29 2003	Brief of appellants Richard Vieth, et al. filed.
Aug 29 2003	Brief amici curiae of Pennsylvania Voters Joann Erfer and Jeffrey B. Albert filed.
Aug 29 2003	Brief amici curiae of ACLU, et al. filed.
Aug 29 2003	Brief amicus curiae of DKT Liberty Project filed.
Aug 29 2003	Brief amici curiae of The Reform Institute, et al. filed.
Aug 29 2003	Brief amici curiae of Texas House Democratic Caucus, et al. filed.
Aug 29 2003	Brief amici curiae of Public Citizen, et al. filed.
Aug 29 2003	20 copies of bound record material submitted by appellants.
Sep 15 2003	Extension of time within which to file respondents' brief on the merits to and including October 17, 2003.
Sep 24 2003	SET FOR ARGUMENT Wednesday, December 10, 2003.
Sep 25 2003	CIRCULATED.
Sep 30 2003	Application (03A282) for leave to file appellees brief on the merits in excess of page limits, submitted to Justice Souter.
Oct 1 2003	Application (03A282) denied by Justice Souter.
Oct 17 2003	Brief of appellees Robert C. Jubelirer and John Perzel filed. (Distributed).
Oct 17 2003	Brief of appellees Cortes, and Accurti filed. (Distributed.
Oct 17 2003	Brief amici curiae of Leadership of Alabama Senate and House of Representatives, et al. filed.
Oct 17 2003	Letter of Pennsylvania Governor and Lieutenant Governor waiving their right to file a

	brief on the merits.
Oct 24 2003	Record received from the U.S.D.C. for the Middle Dist. of Pennsylvania. (2 boxes)
Oct 30 2003	Motion for divided argument filed by appellees.
Nov 17 2003	Motion for divided arguement filed by appellees GRANTED.
Nov 19 2003	Reply of appellant Richard Vieth, et al. filed. (Distributed)

Supreme Court, U.S.
FILED

(1)

No. 021580 APR 25 2003

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

RICHARD VIETH, *et al.*,
Appellants,

v.

ROBERT C. JUBELIRER AND JOHN M. PERZEL, *et al.*,
Appellees.

On Appeal from the United States District Court for the Middle District of Pennsylvania

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether the District Court erred in effectively concluding that voters affiliated with a major political party may never state a claim of unconstitutional partisan gerrymandering, thereby nullifying this Court's decision in *Davis v. Bandemer*, 478 U.S. 109 (1986).

2. Whether a State presumptively violates the Equal Protection Clause when it subordinates all traditional, neutral districting principles to the overarching goal of drawing a congressional redistricting map that achieves maximum partisan advantage for members of one political party.

3. Whether a State exceeds its delegated power under Article I of the Constitution when it draws congressional-district boundaries to ensure that candidates from one political party will consistently capture a supermajority of the State's congressional seats even if those candidates win less than half the popular vote statewide.

PARTIES TO THE PROCEEDING

Appellants are Richard Vieth, Norma Jean Vieth, and Susan Furey. Appellees are Robert C. Jubelirer, President of the Pennsylvania Senate; John M. Perzel, Speaker of the Pennsylvania House of Representatives; Edward G. Rendell, Governor of Pennsylvania; Catherine Baker Knoll, Lieutenant Governor of Pennsylvania; Pedro A. Cortes, Acting Secretary of the Commonwealth; and Monna J. Accurti, Commissioner of the Bureau of Commissions, Elections, and Legislation of the Pennsylvania Department of State.

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The District Court's opinion and order are reported at 241 F. Supp. 2d 478 and reprinted at J.S. App. 1a-12a. An earlier opinion addressing standards for partisan gerrymandering in more detail is reported at 188 F. Supp. 2d 532 and reprinted at J.S. App. 13a-45a.

JURISDICTION

The three-judge District Court's final opinion and order dismissing Appellants' claims for injunctive relief from an alleged partisan gerrymander were entered on January 24, 2003. Pursuant to 28 U.S.C. § 2101(b), the notice of appeal was timely filed on February 24, 2003. J.S. App. 126a-127a. This Court's jurisdiction is invoked under 28 U.S.C. § 1253.

CONSTITUTIONAL PROVISIONS INVOLVED

The Equal Protection Clause of Section 1 of the Fourteenth Amendment to the United States Constitution provides: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." Section 2 of Article I of the Constitution provides in part: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States . . . ." The Elections Clause of Article I, Section 4 of the Constitution provides: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

STATEMENT OF THE CASE

Jurists running the gamut from Seventh Circuit Judge Richard A. Posner to District Judge Adalberto Jordan of the Southern District of Florida have recently joined the chorus

of commentators[1] asking this Court to revisit the issues it last addressed nearly two decades ago in *Davis v. Bandemer*, 478 U.S. 109 (1986). The *Bandemer* Court held that partisan-gerrymandering claims were justiciable. But as Judge Jordan explained, since then the "lower courts [have] continue[d] to struggle in an attempt to interpret and apply the 'discriminatory effect' prong of the [*Bandemer*] standard." *Martinez v. Bush*, 234 F. Supp. 2d 1275, 1352 (S.D. Fla. 2002) (three-judge court) (concurring opinion). Citing this Pennsylvania case, Judge Jordan complained that "'the recondite standard enunciated in *Bandemer* offers little concrete guidance.'" *Id.* (quoting *Vieth v. Pennsylvania*, 188 F. Supp. 2d 532, 544 (M.D. Pa. 2002) (three-judge court), J.S. App. 33a-34a). Judge Jordan therefore urged this Court "to note probable jurisdiction in . . . one of the . . . political gerrymandering cases arising from this electoral cycle and hear oral argument." *Id.* at 1353.

Similarly, Judge Posner has now called on federal courts to give "careful judicial scrutiny" to gerrymandering that "entrench[es] incumbents or dominant [political] parties." RICHARD A. POSNER, LAW, PRAGMATISM, AND DEMOCRACY 242 (2003). Judge Posner explains that "judicial insouciance" toward partisan gerrymanders "designed to create 'safe' seats for the party that controls the legislature" has undermined "electoral competition, the lifeblood of democracy." *Id.* at 244-45. Courts and constitutional scholars alike, he argues, pay too "little attention to partisan gerrymandering in comparison to the attention they lavish on malapportionment [*i.e.*, one-person, one-vote], campaign-finance reform, term limits, and racial gerrymandering." *Id.* at 244. "As a result, although partisan

[1] *See, e.g.*, Samuel Issacharoff, *Gerrymandering and Political Cartels*, 116 HARV. L. REV. 593, 597-98, 601-02 (2002); John Hart Ely, *Gerrymanders: The Good, The Bad, and the Ugly*, 50 STAN. L. REV. 607, 621 (1998).

gerrymandering is rife, the courts have done virtually nothing to control it." *Id.* at 245.

This case presents the Court with an ideal opportunity to clarify *Bandemer* and bring extreme partisan gerrymandering under control.

Appellants, who are Democratic voters from Pennsylvania, appeal the rejection by a three-judge Federal District Court of their claims that Pennsylvania's new congressional redistricting plan is so biased in favor of Republicans that it constitutes an unconstitutional partisan gerrymander. The ruling below is one of a series of lower-court decisions since *Davis v. Bandemer*, holding that it is not enough for plaintiffs to show that a districting map severely "packs" and "fractures" voters of one political party and thus disproportionately favors candidates of another party. Although far from consistent with one another, these decisions have all required plaintiffs to prove some harm in addition to the harm caused by a severely biased redistricting map – for example, proof that members of the disfavored political party are barred from organizing and campaigning for candidates, or a showing that the candidates of the party favored by the map, when elected, would completely ignore constituents aligned with the disfavored party. Such an approach means that partisan gerrymandering, while justiciable in theory, is immune from legal challenge in actual practice, no matter how extreme the bias that is introduced into a districting scheme. Recognizing that reality, lawmakers have "pushed the envelope" of partisan bias in the post-2000 round of redistricting, with Pennsylvania's map being just one of the most extreme. It is essential that this Court undertake plenary review in this case to make clear that the harms caused by partisan gerrymandering are not wholly beyond judicial redress.

Following the 2000 census, the size of Pennsylvania's congressional delegation shrunk from 21 members to 19.

Republican legislators, who constitute a majority in both houses of the Pennsylvania General Assembly, introduced and ultimately passed a map on January 3, 2002.[2] That map became known as Act 1 after the Governor signed it into law on January 7, 2002.

Act 1 was immediately controversial and received national attention as "the most partisan congressional gerrymander of this young century, and among the worst in the last several decades of the earlier millennium." Gregory M. Harvey, *Redistricting Plan Draws the Line Between Equal and Fair*, Legal Intelligencer, May 20, 2002, at 6. The map was designed to give Republicans a supermajority in the Commonwealth's congressional delegation, even if, as usually occurs, Republican candidates receive less than half of the vote for Congress statewide. Moreover, to achieve this extreme level of partisan bias, the plan's authors sacrificed every traditional districting principle – slashing through communities, splitting precincts, municipalities, and counties, and producing a map that can only be described as a contorted mess. *See* J.S. App. 54a-55a; 134a-137a.[3]

For example, one heavily Democratic portion of Montgomery County (located in the suburbs of Philadelphia) was extracted from relatively competitive District 13 and connected to heavily Republican District 8 by means of a several-mile-long, 400-foot-wide connecting isthmus. Similarly, the Pennsylvania Commonwealth Court described nearby District 6 as "an irregular, 'dragon-shaped' district that covers three counties in southeast Pennsylvania and includes several wholly distinct, unconnected communities

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[2] Although the map was passed on a party-line vote in the Senate, its supporters were able to induce 42 Democrats to support it in the House.

[3] Maps of Act 34 – which, as discussed below, is the remedial redistricting plan challenged in this appeal, and which is nearly identical to Act 1 – are included in the appendix, J.S. App. 164a- 166a.

of interest." *Id.* 96a. Perhaps worst of all, intertwined Districts 12 and 18, which wander all over southwestern Pennsylvania, split 8 counties and 39 municipalities as they carefully separate Republican-leaning and Democratic-leaning neighborhoods along their jagged borders. Overall, the new map increased the number of county splits from 18 to 25 and the number of municipal splits from 13 to 59.

In addition, although Pennsylvania lost just two congressional seats, Act 1 "paired" six incumbents in three districts. In two cases, pairs of Democratic incumbents were matched against one another. In a third district, a Democratic incumbent was placed with a Republican in a district designed to favor the Republican.

On January 11, 2002, Appellants Richard Vieth, Norma Jean Vieth, and Susan Furey brought this action in federal court, raising two primary claims. First, Appellants claimed that Act 1 creates congressional districts of needlessly unequal population in violation of Article I, Section 2 of the U.S. Constitution. *Id.* 135a, 144a. Second, Appellants claimed that Act 1 was a political gerrymander that deprived Pennsylvania's Democratic voters of the rights guaranteed to them by the Equal Protection Clause, as well as Article I of the U.S. Constitution. *Id.* 137a-145a. In support of the latter claim, they pointed to the huge disparity between votes for Congress statewide (generally slightly favoring the Democrats) and electoral outcomes deliberately created by the mapmakers (a Republican advantage of at least 12-to-7 and perhaps 14-to-5). *Id.* 137a-138a. They also relied on the disparate pairing of incumbents and further alleged that the map would consistently frustrate the will of the political majority over the course of the next decade. *Id.* 139a-144a.

At approximately the same time, a different set of plaintiffs filed suit in state court, claiming that the partisan bias of the districting plan violated the Pennsylvania Constitution. The Pennsylvania Supreme Court directed the

Commonwealth Court to hold an expedited trial and to propose findings of fact and conclusions of law. The Commonwealth Court found that the plan enacted by the Pennsylvania General Assembly would produce a 14-to-5 or 13-to-6 Republican advantage in the State's congressional delegation, even if Republican candidates received less than half the popular vote. J.S. App. 94a. It also detailed the effects of incumbent pairings in the map as well as the ways that partisan ambition overrode traditional districting criteria as compactness and respect for communities of interest and municipal boundaries. *Id.* 94a-97a.

Ultimately, however, the Pennsylvania Supreme Court rejected the plaintiffs' state-law claims in a ruling that presaged the federal-court ruling now on appeal. Basing its analysis of state law on this Court's decision in *Bandemer*, the state court held that the plaintiffs' claims were deficient because they had not gone beyond proving "disproportionate results" and had not shown that Democrats would be "shut out of the political process." *Id.* 74a-77a.

Chief Justice Zappala dissented. He commented: "If the record of this case does not establish unconstitutional political gerrymandering, *no such claim exists*. This Court should not then waste its valuable judicial resources entertaining illusory claims that, in reality, can never be established." *Id.* 125a (emphasis added).

In the federal case, the three-judge District Court granted the Commonwealth's motion to dismiss Appellants' political-gerrymandering claims. The court examined those claims entirely within the framework set forth by the plurality opinion in *Bandemer*, never acknowledging (despite a motion for reconsideration) Appellants' separate Article I arguments. The court held that, to state an equal-protection claim of partisan gerrymandering, Appellants must "prove both intentional discrimination against an identifiable political group and an actual discriminatory effect on that

group." *Id.* 32a (quoting *Bandemer*, 478 U.S. at 127 (plurality opinion)). The court determined that Appellants satisfied the first two prongs of this test: namely, (1) that Appellants, and all Pennsylvania citizens who vote for Democrats, constitute an identifiable political group, and (2) that Appellants' allegations that the General Assembly Republicans "prevented all Democratic input on Act 1 in order to establish a Republican super-majority in Pennsylvania's congressional caucus" were sufficient to establish the Assembly's discriminatory intent. *Id.* 32a-33a.

The District Court held, however, that Appellants did not allege sufficient discriminatory effects to satisfy the third prong of the *Bandemer* test. The court held that the discriminatory-effects analysis itself involved another two-pronged showing: (1) that the challenged map would produce disproportionate election results, and (2) that "the electoral system is arranged in a manner that will consistently degrade a voter's, or group of voters', influence on the political process as a whole." *Id.* 33a (quoting *Bandemer*, 478 U.S. at 110 (plurality opinion)). Observing that *Bandemer* itself "offers little concrete guidance" with respect to this second prong, the District Court instead relied on *Badham v. Eu*, 694 F. Supp. 664 (N.D. Cal. 1988) (three-judge court), *summarily aff'd*, 488 U.S. 1024 (1989).

Adopting *Badham*'s interpretation of the second prong of the discriminatory-effects test, the District Court held that Appellants could not establish Act 1's actual discriminatory effects because they could not allege "facts indicating that as a result of Act 1 [they] will be completely shut out of the political process." J.S. App. 33a. More specifically, the court faulted Appellants for failing to allege "that anyone has ever prevented, or will ever prevent, Plaintiffs from: registering to vote; organizing with other like-minded voters; raising funds on behalf of candidates; voting; campaigning; or speaking out on matters of public concern." *Id.* 39a

(citing *Badham*, 694 F. Supp. at 670). Without such evidence of "impediments to . . . full participation in the 'uninhibited, robust, wide-open' public debate on which our political system relies," the District Court held that Appellants could not state an equal-protection claim of partisan gerrymandering. *Id.* (quoting *Badham*, 694 F. Supp. at 670). In other words, the court held that the severely biased map enacted by the Commonwealth would become unconstitutional only if it were accompanied by *entirely separate and independently unconstitutional* limitations on Democrats' ability to vote, campaign for candidates, and speak out about political issues.

Appellants' one-person, one-vote claim was not dismissed. After a two-day trial, the District Court ruled in favor of Appellants on that claim. J.S. App. 57a. At trial, Appellants demonstrated that Act 1's population deviation of 19 persons was not justified by *any* neutral, consistently applied redistricting policy. Instead, the deviation reflected Republican legislators' unwillingness to make even minor changes in a carefully calibrated map.

Based on this evidence, the District Court found that the nonpartisan justification for the 19-person population deviation offered by Appellees – minimizing split precincts – was a "mere pretext" and that the deviation therefore was not constitutionally justified under *Karcher v. Daggett*, 462 U.S. 725 (1983). J.S. App. 53a-54a. Specifically, the District Court found that, of all the maps introduced at trial, Act 1 contained the least compact districts and split the most counties and municipalities. *Id.* 54a-55a. The court also found that "[t]o the extent that Act 1 retains the cores of prior districts, it does so only for districts containing Republican incumbents." *Id.* 55a. And finally, the court found that Act 1 "failed most miserably" in terms of avoiding contests between incumbent Representatives: Although Pennsylvania's loss of two congressional seats

required the pairing of only two sets of incumbents in the 2002 elections, Act 1 gratuitously paired *three* sets of incumbents, in a manner favoring Republican candidates in each instance, while also creating an open seat favoring a Republican candidate. *Id.*

In its April 8, 2002 order invalidating Act 1, the District Court retained jurisdiction over the case pending the court's review and approval of a remedial redistricting plan. *Id.* 56a-57a. On April 18, 2002, then-Governor Schweiker signed into law Act No. 2002-34, 25 P.S. § 3595.301 ("Act 34"), a remedial plan enacted by the Pennsylvania General Assembly a day earlier.

As Appellants demonstrated in an April 22, 2002 brief challenging the constitutionality of Act 34, the new congressional districts in the remedial plan were nearly identical to the gerrymandered districts in Act 1. Act 34's districts mirrored the bizarre shapes of those in Act 1, as each of the new Act 34 districts retained at least 97.8% of the population of its Act 1 predecessor. J.S. App. 150a, 160a-163a. As with Act 1, the General Assembly disregarded all legitimate redistricting principles when passing Act 34, creating meandering, noncompact districts that split counties, municipalities, and communities of interest. *See id.* 164a-166a. In fact, the districts in Act 34 were slightly *less* compact than Act 1's districts. *Id.* 150a, 159a. And Act 34 further increased the number of political-subdivision splits, slicing 29 counties and 81 municipalities (up from 25 and 65, respectively, in Act 1). *Id.* 150a, 152a-158a.

On April 23, 2002, with the question of the sufficiency of the Act 34 remedy pending and the congressional primaries fast approaching, the District Court stayed its earlier decision and ordered Appellees to conduct the 2002 elections using Act 1. Meanwhile, Appellants appealed the District Court's dismissal of their partisan-gerrymandering challenge to Act 1. On October 7, 2002, this Court

dismissed that appeal as moot given that Act 34 by its terms repealed Act 1 for any election after 2002. *Vieth v. Jubelirer*, 123 S. Ct. 68 (2002).

The November 2002 general elections confirmed the extreme partisan bias of Act 1 (and, by extension, Act 34). All but one of the Republican incumbents won reelection by more than 14 percentage points. *See* Pa. Dep't of State, Commissions, Elections & Legislations, Official 2002 General Election Results, Representative in Congress *at* http://web.dos.state.pa.us/elections/elec_results/dsf/district3.cgi?office=USC&eyear=2002&etype=G.[4] In addition, a Republican won the newly created open seat in District 6. *See id.* Ultimately, Republicans gained a 12-to-7 advantage in the State's congressional delegation – a net loss of three Democratic incumbents. *See id.*

As the parties continued to litigate the remedial sufficiency of Act 34 in the District Court, Appellants reiterated their argument – previously rejected by the court with respect to Act 1 – that the map was an unlawful partisan gerrymander. On January 24, 2003, the District Court approved Act 34 as a remedy for the one-person, one-vote violation in Act 1. J.S. App. 12a. Yet the court also concluded that, other than avoiding population deviations among districts, Act 34 "jettisons every other neutral non-discriminatory redistricting criteri[on]." *Id.* 9a n.3. "Despite an opportunity to improve upon the numerous deficiencies of Act 1," the District Court explained, "Defendants have returned to this court with essentially the same map." *Id.* The court nonetheless rejected Appellants' partisan-gerrymandering claim, reiterating its earlier conclusion that

[4] Only George Gekas, the Republican incumbent running against Democratic incumbent Tim Holden in District 17, failed in his reelection bid. Holden won District 17 – a district comprising approximately 60% of the population of Gekas's former district – with only 51% of the vote.

"'Plaintiffs [did not] allege[] facts indicating that they have been shut out of the political process and, therefore, they cannot establish an actual discriminatory effect on them,' as required by *Davis v. Bandemer*." *Id.* 11a (quoting *Vieth*, 188 F. Supp. 2d at 547, J.S. App. 39a). This appeal followed.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

This Court held in *Davis v. Bandemer*, 478 U.S. 109, 118-27 (1986), that partisan gerrymandering claims are justiciable. That decision was a watershed. Prior to *Bandemer*, the only judicially enforced constitutional limit on political discrimination in redistricting was the one-person, one-vote mandate. But as Justice Harlan observed in 1969, the rule "of absolute [population] equality is perfectly compatible with 'gerrymandering' of the worst sort. A computer may grind out district lines which can totally frustrate the popular will on an overwhelming number of critical issues." *Wells v. Rockefeller*, 394 U.S. 542, 551 (1969) (dissenting opinion); *see also Karcher v. Daggett*, 462 U.S. 725, 776 (1983) (White, J., dissenting) ("There is now evidence that Justice Harlan was correct to predict that '[e]ven more than in the past, district lines are likely to be drawn to maximize the political advantage of the party temporarily dominant in public affairs.'") (citation omitted). By recognizing a limit to political discrimination in redistricting other than the rule of population equality, *Bandemer* promised to check partisan gerrymandering, which Justice White deemed "a far greater potential threat to equality of representation." *Karcher*, 462 U.S. at 776 (dissenting opinion) (citation and internal quotation marks omitted).

That promise, as the District Court's decision demonstrates, has yet to be realized. It is difficult to imagine a more egregious partisan gerrymander than Act 34, a map that jettisons all traditional, neutral districting principles so that one political party can win a supermajority of the State's

congressional seats even if it receives less than half of the popular vote. The degree of partisan skew in this case goes far beyond that of the map challenged in *Bandemer* itself. But despite this Court's clear indication in *Bandemer* that state legislatures may not consign political majorities to minority status, and despite Appellants' specific allegations that Act 34 would accomplish that goal, the District Court held that Appellants had failed to state a valid claim.

In so holding, the District Court relied not on *Bandemer* itself, but on the decision of the first lower court to apply *Bandemer* – *Badham v. Eu*, *supra*. The *Badham* district court enunciated a test for unconstitutional partisan gerrymandering that clearly conflicts with *Bandemer*. Application of that test renders it impossible for voters affiliated with a major political party to state a political-gerrymandering claim, because it requires them to demonstrate *not only* severe bias in a districting map *but also* exclusion from any opportunity to participate in the political process through voting, organizing, and campaigning for office. Under that early misinterpretation of *Bandemer*, which has come to be very influential among lower courts, every claim of political gerrymandering – with one exception, *see infra* pages 20-21 – has failed.

But there has never been a clearer need for some enforceable limit on the ability of legislators to dilute the voting power of a class of citizens based on their political viewpoint. In the 17 years since this Court decided *Bandemer*, advances in political data-gathering and computer technology have made it increasingly easy for legislatures to gerrymander with surgical precision, excising and shifting just a few politically undesirable voters at a time. As a result, in the current round of redistricting, legislators in a number of key States, including Pennsylvania, Florida, and Michigan, have drawn congressional district maps with remarkable levels of partisan bias. In so doing, they have

undermined any assumption that partisan gerrymandering is a "self-limiting enterprise" because efforts to maximize partisan advantage will cut the margins too thin, weakening a party's safe seats and exposing its own incumbents to greater risks of defeat. *See Bandemer*, 478 U.S. at 152 (O'Connor, J., concurring in the judgment). Indeed, the post-2000 round of redistricting has produced the fewest competitive seats in more than 200 years of congressional history.[5]

The Court should take this opportunity to clarify that extreme partisan gerrymandering is not only justiciable in theory but remediable in actual practice. The *Badham* rule – requiring proof of discriminatory effects that in practice can never be proved – simply makes no sense.

The District Court's adoption of the *Badham* test was even more indefensible because it overlooked the significance of more recent decisions by this Court that help clarify the proper standard for identifying an unconstitutional partisan gerrymander. *First*, this Court has held that a districting plan is presumptively unconstitutional if the mapmakers allowed racial considerations to predominate over all neutral districting principles. *See Shaw v. Reno*, 509 U.S. 630 (1993); *Miller v. Johnson*, 515 U.S. 900 (1995).

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[5] *See, e.g.*, Editorial, *Democracy Denied*, Richmond Times-Dispatch, Mar. 17, 2002, at E2 ("Precision redistricting – *i.e.*, gerrymandering – has made 380 districts safe for one party or the other. Citizens will cast ballots in November, but their votes effectively were counted when the pols drew the lines."); Juliet Eilperin, *House Democrats' Climb Gets Steeper: Party Lacks Rallying Cry as Redistricting, Incumbency Cut Competitive Races*, Wash. Post, Apr. 2, 2002, at A1 ("A decade ago, there were roughly 100 competitive races following redistricting; this year there will be 30 to 40, perhaps even fewer . . . ."); *see also* Alison Mitchell, *Redistricting 2002 Produces No Great Shake-Ups*, N.Y. Times, Mar. 13, 2002, at A20 ("With Congressional redistricting almost complete, the once-a-decade redrawing of the nation's political map is turning out to favor incumbents to an unusual degree, making many of the House's swing seats into safer territory for one party or the other.").

Following the logic of these decisions, it is presumptively unconstitutional under the Equal Protection Clause for a State to subordinate all neutral districting principles to the predominant aim of maximizing partisan advantage.

Second, the Court has made clear that – in the context of *congressional* (as opposed to state-legislative) redistricting – Article I of the U.S. Constitution imposes more stringent limits on the power of the state legislatures to manipulate electoral outcomes. States may not use their power to regulate federal election procedure to dictate electoral outcomes, to advantage one class of candidates over another, or to frustrate the will of the majority of voters. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995); *Cook v. Gralike*, 531 U.S. 510 (2001). The same principles require stringent limits on the power of legislatures to predetermine the results of congressional voting through strategic line-drawing.

The errors committed below in this case, and in other cases like it, demonstrate a pressing need for this Court to clarify and enforce the constitutional norm it first announced in *Bandemer* – a norm necessary to ensure fairness and competition in congressional elections.

I. THE DISTRICT COURT MISREAD *BANDEMER*.

The controlling plurality opinion in *Bandemer* established that a plaintiff who alleges "intentional discrimination against an identifiable political group and an actual discriminatory effect on that group" states a claim of unconstitutional political gerrymandering. 478 U.S. at 127. While *Bandemer* recognized that there is no guarantee of proportional representation in our winner-take-all political system, it also recognized that there is a difference between a redistricting plan that results in moderately disproportionate representation and one designed to ensure that a party that wins less than half the popular vote statewide will win a

supermajority of the seats for an entire decade. Thus, *Bandemer* emphasized three factors in assessing whether discriminatory effects are unconstitutional: (1) the likely partisan skew must be severe, handing a supermajority of the seats to one political party even if its candidates consistently earn less than half the popular vote statewide; (2) the likely duration of the skew must exceed a single election cycle and stretch on for most or all of the decade; and (3) the skew must be sufficient to strip effective control from the majority of voters and deliver it to a minority faction. The Court explained that, to make out a claim of partisan gerrymandering, a plaintiff must show that "the electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively," and that this showing can be "supported by evidence of continued frustration of the will of a majority of the voters." *Id.* at 133. In other words, redistricting should achieve "a level of parity between votes and representation sufficient to ensure that significant minority voices are heard and that majorities are not consigned to minority status," in keeping with "our general majoritarian ethic and the objective of fair and adequate representation." *Id.* at 125 n.9 (majority opinion).

A. Appellants Stated a Valid Claim Under *Bandemer*.

Appellants' allegations in this case were sufficient to establish Act 34's unconstitutionally discriminatory effects. Appellants alleged that Act 34 would generate extremely disproportionate results: Although a slight majority of Pennsylvania voters have favored Democratic candidates in recent federal elections, Act 34 is likely to produce a congressional delegation that consists of 12 to 14 Republicans and only 5 to 7 Democrats. J.S. App. 137a-

138a.[6] Appellants further alleged that this partisan skew would be locked in for at least a decade, that it would degrade the ability of the Democrats to field quality candidates and raise funds, and that it was achieved through complete disregard of the constraints imposed by adherence to traditional neutral districting principles. *Id.* 139a-144a. To be sure, establishing the discriminatory effects of a partisan gerrymander requires a showing of "more than a *de minimis* effect" on the plaintiffs, as "[d]istrict-based elections hardly ever produce a perfect fit between votes and representation," and "[i]nviting attack on minor departures from some supposed norm would too much embroil the judiciary in second-guessing" state legislatures. *Bandemer*, 478 U.S. at 133-34 (plurality opinion). But here, the predictable effect of Act 34's discrimination against Democratic voters could not possibly be considered a "minor departure" from any reasonable norm.

The level of partisan skew in this case contrasts dramatically with the facts present in *Bandemer*, where the evidence had indicated that Democrats in the 1982 elections won 51.9% of the major-party vote and received 43% of the seats in the House, and won 53.1% of the vote and 52% of the seats in the Senate. *See id.* at 115, 134, 137 n.16. Moreover, in *Bandemer*, "the District Court [had] declined to hold that the 1982 election results were the predictable consequences of the 1981 Act" or "that those results were a reliable predictor of future ones." *Id.* at 135. Here, despite the fact that Democrats consistently constitute a majority of

[6] Although the allegations in Appellants' first amended complaint initially related to Act 1, Appellants reiterated their partisan-gerrymandering claim with respect to Act 34, the remedial redistricting plan, after their appeal of the dismissal of the partisan-gerrymandering challenge to Act 1 was mooted. The District Court, in turn, considered and ultimately rejected Appellants' partisan-gerrymandering allegations as applied to Act 34. J.S. App. 11a-12a.

Pennsylvania voters in congressional elections, *see* J.S. App. 137a-138a, the predictable result of Act 34 is that Republicans will win roughly twice as many seats as the Democrats in Pennsylvania's congressional delegation, *see id.* 138a, and will hold that advantage for the remainder of the decade, *see id.* 139a-144a.

Despite *Bandemer*'s clear indication that a State may violate the Equal Protection Clause when it consigns a political majority to minority status, the District Court dismissed an equal-protection challenge to a map that dispenses with all neutral districting criteria – including compactness, preservation of communities of interest, and avoiding contests between incumbent representatives – in order to engineer districts that relegate a majority of Pennsylvania's voters to a minority of roughly one-third of the State's congressional seats. In so doing, the District Court held that voters cannot state a constitutional violation unless they can show that they have been "completely shut out of the political process" in the Commonwealth of Pennsylvania. That standard, however, effectively makes it impossible for voters affiliated with a disfavored political majority to state a claim of political gerrymandering.

B. The District Court's Construction of *Bandemer* Would Effectively Overrule It.

In adopting a construction of *Bandemer* that would essentially overrule it, the District Court relied entirely on *Badham v. Eu*, the first post-*Bandemer* case to address a partisan-gerrymandering challenge. That reliance was misplaced. The level of discriminatory effects in this case stands in sharp contrast with the facts of *Badham*, where the alleged partisan gerrymander resulted in a difference of 10.1 percentage points between votes and seats in one election and just 3.2 percentage points in the next election – results that appeared to be neither grossly disproportionate nor long-lasting. *Badham*, 694 F. Supp. at 670. Here, Appellants

alleged that Act 34 would produce a *consistent* gap of nearly 20 percentage points between votes and seats. That gap satisfies the discriminatory-effects requirement.

To the extent that *Badham*'s reasoning suggests a contrary result, it is important to note that it is *Bandemer*, not *Badham*, that controls this case. Although this Court summarily affirmed *Badham*, it has never endorsed its reasoning. *See Mandel v. Bradley*, 432 U.S. 173, 176 (1977) (describing the limited precedential value of summary affirmances).[7] Indeed, *Badham*'s reasoning directly conflicts with *Bandemer*'s holding. The *Badham* court dismissed Republican voters' challenge to California's congressional redistricting plan on the ground that the Republicans had not alleged sufficient discriminatory effects. Specifically, the

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[7] This Court's other summary affirmances in political-gerrymandering cases are equally distinguishable. None of those cases involved the level of discriminatory effects presented in this case, where one party in control of both the legislative and the executive branches of state government used that power to enact a plan that would *consistently frustrate the will of the majority of voters*. *See Pope v. Blue*, 809 F. Supp. 392, 396 (W.D.N.C.) (three-judge court) (dismissing allegations that the legislature's creation of two Democratic-leaning majority-minority districts would result in a 9-to-3 Democratic majority, although Republicans accounted for one-third of state voters), *summarily aff'd*, 506 U.S. 801 (1992); *Holloway v. Hechler*, 817 F. Supp. 617, 628 (S.D. W. Va. 1992) (three-judge court) (allegations that the state legislature had purposefully drawn a map that would protect incumbent legislators), *summarily aff'd*, 507 U.S. 956 (1993); *Anne Arundel County Republican Cent. Comm. v. State Admin. Bd. of Election Laws*, 781 F. Supp. 394, 409-10 (D. Md. 1991) (three-judge court) (Niemeyer, J., dissenting) (allegations that a redistricting map was drawn to protect senior incumbents), *summarily aff'd*, 504 U.S. 938 (1992); *Fund for Accurate & Informed Representation, Inc. v. Weprin*, 796 F. Supp. 662, 669 (N.D.N.Y.) (three-judge court) (per curiam) (redistricting plan allegedly disadvantaging Republicans in State Assembly resulted from political compromise that allowed the Republicans to create a Senate plan in which they were in the majority), *summarily aff'd*, 506 U.S. 1017 (1992).

Badham court faulted the Republicans for their failure to allege

> that California Republicans have been "shut out" of the political process . . . [or] that anyone has ever interfered with Republican registration, organizing, voting, fund-raising, or campaigning. Republicans remain free to speak out on issues of public concern; plaintiffs do not allege that there are, or have ever been, any impediments to their full participation in . . . public debate . . . . Particularly conspicuous by its absence is any allegation that plaintiffs' interests are being "entirely ignore[d]" by their congressional representatives.

694 F. Supp. at 670 (internal citations omitted). The *Badham* court thus announced an "effects" standard that goes far beyond *Bandemer*: A redistricting map is unconstitutional only if it *silences* candidates and voters and leads legislators to ignore the interests of the opposing party's voters *entirely*.

The *Badham* decision was the first, but certainly not the last, to misinterpret *Bandemer* in this way. Other courts have likewise required plaintiffs to show that a particular redistricting map shuts them out of the political process as a whole by demonstrating that the map interferes with internal party processes, such as voter registration, organizing, voting, fundraising, and campaigning. *See, e.g., Pope v. Blue*, 809 F. Supp. 392, 397 (W.D.N.C.) (three-judge court), *summarily aff'd*, 506 U.S. 801 (1992). Some courts have also suggested that a plaintiff must show that the challenged redistricting plan eliminates *all* seats held by members of the disfavored party. *See, e.g., id.*

To be sure, a number of courts have criticized *Badham* for creating a standard that, in effect, makes it impossible for voters affiliated with a major political party to state a claim

of unconstitutional political gerrymandering. *See O'Lear v. Miller*, 222 F. Supp. 2d 850, 857 & n.4 (E.D. Mich.) (three-judge court), *summarily aff'd*, 123 S. Ct. 512 (2002); *White v. Alabama*, 867 F. Supp. 1571, 1575 (M.D. Ala. 1994); *Terrazas v. Slagle*, 821 F. Supp. 1162, 1173 (W.D. Tex. 1993) (three-judge court) (per curiam). But these courts, too, have required showings that make it effectively impossible for a member of a major political party to state a partisan-gerrymandering claim. They have held, for example, that a redistricting map for a particular political office is immune from challenge if members of the disfavored party hold other state or federal offices, including offices in entirely separate branches of government. *See, e.g.*, *White*, 867 F. Supp. at 1575 (requiring evidence that challenged at-large system for electing state appellate judges diluted plaintiffs' voting strength in the state political system as a whole and not just in the appellate judicial system). Or they have required a showing that a particular redistricting map turns plaintiffs into "political pariahs," such that they cannot "over the long haul counteract [partisan gerrymandering] through [their] influence in another relevant political structure or structures." *Terrazas*, 821 F. Supp. at 1174; *see id.* (rejecting political-gerrymandering claim because Texas governor – who is elected and "hence not subject to gerrymandering" –has power to veto any redistricting plan); *see also O'Lear*, 222 F. Supp. 2d at 857.

The one case in which a federal court did find a viable *Bandemer* claim – *Republican Party v. Martin*, 980 F.2d 943 (4th Cir. 1992) – would have ended with a dismissal on the pleadings under the test enunciated by the District Court in this case. *Martin* was a challenge to a statewide system for electing trial judges that had resulted in the election of just one Republican in 90 years. *See id.* at 947-49. The court rejected the defendants' demand that Republicans show they had been completely "shut out" of the political process. *See*

id. at 958. Requiring members of a major political party to allege that they have been *silenced* would be to "hold, in effect, that regardless of the specific allegations of its complaint an identifiable political group could not survive a motion to dismiss or prevail on the merits of its claim." *Id.* Such a construction, the court noted, "would render nugatory [*Bandemer*'s] holding that political groups may bring claims of partisan gerrymandering." *Id.*

Furthermore, the factors discussed by *Badham* and the District Court in this case were not the factors on which this Court relied in evaluating whether the *Bandemer* plaintiffs had stated a valid claim. The *Bandemer* plurality did not, for example, evaluate whether Democratic voters remained free to speak on issues of public concern, potentially could influence Republican legislators, or were able to elect some Democratic legislators. Instead, this Court rejected plaintiffs' claim because they had failed to establish that the disproportionate outcome of *one* election had predictably resulted from the redistricting plan or was a reliable predictor of future election results. *See Bandemer*, 478 U.S. at 134-35, 139-40 (plurality opinion). Thus, the plurality based its decision on the extent and duration of the plan's likely effects on election outcomes.

In short, to satisfy *Bandemer*'s "actual discriminatory effects" element, a plaintiff need only show that (1) "the electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively," and (2) this bias will cause "continued frustration of the will of a majority of the voters." *Id.* at 133 (plurality opinion). To be sure, this will occur infrequently – only where a State is relatively evenly balanced politically, but one party controls both the legislature and the governorship and is able to use that control to push through a congressional redistricting plan designed to entrench a consistent and substantial advantage over the other party.

But under *Bandemer*, a State violates the Equal Protection Clause when, as here, it consigns a political party to roughly one-third or less of the congressional seats, even if that party consistently wins a majority of the popular vote statewide.

The allegations in this case thus suffice to make out a partisan-gerrymandering claim under *Bandemer*. Act 34 will achieve its intended effect and produce extremely disproportionate outcomes, resulting in the "continued frustration of the will of a majority of the voters" for at least five election cycles – precisely the type of "actual discriminatory effect" that *Bandemer* identified as sufficient to state a political-gerrymandering claim. 478 U.S. at 127, 133, 135, 140 (plurality opinion). As Chief Justice Zappala put the matter, if this case does not involve a valid claim of political gerrymandering, then "no such claim exists." J.S. App. 125a; *see also* Daniel H. Lowenstein & Richard L. Hasen, *Election Law Cases and Materials* 10 (2d ed. 2002 Update) ("To say the least, it would be the rare case when a major political party could make and substantiate allegations of the sort that the *Vieth* court seems to require.").

II. UNDER THIS COURT'S *SHAW V. RENO* LINE OF CASES, ACT 34 UNCONSTITUTIONALLY SUBORDINATED NEUTRAL DISTRICTING PRINCIPLES TO RANK PARTISANSHIP.

Act 34 violates the Equal Protection Clause by emphasizing purely partisan considerations to the exclusion of traditional neutral districting principles such as compactness and respect for county and municipal boundaries. In a series of post-*Bandemer* decisions beginning with *Shaw v. Reno*, 509 U.S. 630 (1993), this Court has clarified the boundary between constitutional uses of otherwise permissible districting considerations – such as race or party affiliation – and unconstitutional discrimination. In evaluating a claim of race-based

redistricting, the *Shaw* Court held that a state legislature may not jettison neutral districting principles with the predominant purpose of advantaging or disadvantaging a particular group of voters. *Id.* at 642; *see also Miller v. Johnson*, 515 U.S. at 916-17. The Court determined that the consideration of race – which is unquestionably legitimate in redistricting decisions under Sections 2 and 5 of the Voting Rights Act, 42 U.S.C. §§ 1973, 1973c – becomes illegitimate when race is considered to the exclusion of other traditional neutral districting principles such as "compactness, contiguity, and respect for political subdivisions." *Shaw*, 509 U.S. at 647. The Court's holding was based in part on its concern for the expressive harms that stem from governmental classification of voters on the basis of their race, and in part on its concern for representational harms:

> When a district obviously is created solely to effectuate the perceived common interests of one racial group, elected officials are more likely to believe that their primary obligation is to represent only the members of that group, rather than their constituency as a whole. This is altogether antithetical to our system of representative democracy.

Id. at 648; *accord Miller*, 515 U.S. at 911-12.

The holdings in *Shaw* and *Miller* apply here as well, for two reasons. First, the representational harms the Court identified are, if anything, more acute in cases of partisan gerrymandering. When district lines are drawn solely to strengthen one party's grip on a district, the legislature sends an unmistakable message to the representative of that district that he or she need only respond to the concerns of that party's voters. Second, just as classifications based on race are of particular concern under the Equal Protection Clause, classifications based on partisan affiliation or political viewpoint are generally barred by the First and Fourteenth Amendments, as this Court has repeatedly stated in cases

involving party-based classifications and discrimination. *See, e.g., O'Hare Truck Serv., Inc. v. City of Northlake*, 518 U.S. 712, 717 (1996); *Elrod v. Burns*, 427 U.S. 347, 372-73 (1976) (plurality opinion); *Police Dep't v. Mosley*, 408 U.S. 92, 94-95 (1972); *Williams v. Rhodes*, 393 U.S. 23, 31 (1968). If the Constitution bars a districting plan that is "'unexplainable on grounds other than race,'" *Shaw*, 509 U.S. at 644 (citation omitted), a plan that is unexplainable on grounds other than political viewpoint should also be constitutionally suspect.

The Court's opinions in *Hunt v. Cromartie*, 526 U.S. 541 (1999), and *Easley v. Cromartie*, 532 U.S. 234 (2001), which drew a distinction between race and politics as districting concerns, do not bar application of the *Shaw* approach to political-gerrymandering cases. In those cases, the Court held that a district is not drawn predominantly on the basis of race in violation of *Shaw v. Reno* where the evidence is equally consistent with "a constitutional political objective" – there, the creation of one safe Democratic seat. *Easley*, 532 U.S. at 239. Although these decisions affirm that political considerations often are permissible in districting, they do not stand for the proposition that a concerted effort to minimize the voting strength of a disfavored political party *statewide*, accompanied by a complete subordination of neutral districting principles, is less of a constitutional concern than a comparable effort to separate voters based on race.

Act 34 is clearly unconstitutional under the principles announced in *Shaw*. As the District Court found, Republican legislators "jettison[ed] every . . . neutral non-discriminatory redistricting [principle]" in a single-minded effort to maximize their partisan advantage. J.S. App. 9a n.3. The product of that effort is a districting plan that can rationally be viewed only as an effort to classify voters on the basis of their political-party affiliation, without regard to traditional

neutral districting principles. *See Shaw*, 509 U.S. at 644; *Miller*, 515 U.S. at 913.

This Court, having interpreted the Fourteenth Amendment as requiring strict scrutiny of irregularly shaped districts drawn predominantly on the basis of voters' race, should take the next step and recognize that equally irregular districts drawn predominantly on the basis of voters' political viewpoint are also constitutionally suspect. Appellants have alleged – and the District Court found – that the General Assembly abandoned *every* neutral redistricting criterion to ensure that Republicans will win roughly two-thirds of Pennsylvania's districts even if Democrats receive a majority of votes statewide. Those allegations should clearly suffice to state a cognizable equal-protection claim.

III. THE PENNSYLVANIA GENERAL ASSEMBLY EXCEEDED ITS LIMITED AUTHORITY TO REGULATE FEDERAL ELECTION PROCEDURES UNDER ARTICLE I.

Finally, the District Court erred in looking to the Equal Protection Clause as the sole potential limit on political gerrymandering in congressional redistricting. The Elections Clause of Article I, Section 4, which grants States their authority to regulate federal election procedures – including the drawing of congressional districts – imposes an even more fundamental limit on political gerrymandering. To date, this Court has not addressed the contours of those limits in a political-gerrymandering case; indeed, many of the post-*Bandemer* political-gerrymandering cases, like *Bandemer* itself, have involved state-legislative redistricting, to which Article I does not apply. But in the context of a State's regulation of federal elections, recent decisions by this Court have made clear that Article I forbids States from using their Elections Clause authority to thwart the will of a majority of

the voters, as the Pennsylvania General Assembly has done in creating Act 34.[8]

In Article I of the Constitution, the Framers vested the legislative power of the United States in two chambers: the Senate, which was intended to represent the States, and the House of Representatives, which was intended to represent the People, and whose members were accordingly to be chosen "by the People of the several States." U.S. CONST. art. I, § 2. Under the Article I framework, the right to choose congressional representatives "belongs not to the States, but to the people," because "the Framers, in perhaps their most important contribution, conceived of a Federal Government directly responsible to the people, possessed of direct power over the people, and chosen directly, not by the States, but by the people." *U.S. Term Limits*, 514 U.S. at 821. This Court has held that the fundamental principle that the House of Representatives is to be chosen "by the People" bars States from valuing one person's vote in a congressional election more than another's, *see Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964); from forbidding congressional candidates who have served more than two terms to appear on the ballot, *see U.S. Term Limits*, 514 U.S. at 832-35; and from noting on the ballot a congressional candidate's failure to support term limits, *see Cook v. Gralike*, 531 U.S. at 525-26. This principle that the House should be chosen "by the People" likewise should forbid States from distorting congressional district lines to dictate the outcomes of congressional elections and to favor the party that momentarily controls the legislature, at the expense of the majority of the electorate.

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[8] *Cf.* Michael W. McConnell, *The Redistricting Cases: Original Mistakes and Current Consequences*, 24 HARV. J.L. & PUB. POL'Y 103, 114 (2000) (arguing that districting plans that "systematically prevent[] effective majority rule" offend the Framers' republican principles).

Consistent with their vision of the House of Representatives as accountable to the people rather than to the States, the Framers limited the States' involvement in congressional elections to a tightly circumscribed power to set "[t]he Times, Places and Manner" of holding federal elections under the Elections Clause, U.S. CONST. art. I, § 4, cl. 1. This limited delegation of authority reflects the Framers' "overriding concern" regarding "the potential for States' abuse of the power." *U.S. Term Limits*, 514 U.S. at 808-09. The Framers were particularly worried that factional control of state legislatures might frustrate the will of the people in congressional elections. Discussing the Elections Clause at the Constitutional Convention, Madison noted:

> It was impossible to foresee all the abuses that might be made of the discretionary power. . . . Whenever the State Legislatures had a favorite measure to carry, they would take care so to mould their regulations as to favor the candidates they wished to succeed. Besides, the inequality of the Representation in the Legislatures of particular States, would produce a like inequality in the Natl. Legislature, as it was presumable that the Counties having the power in the former case would secure it to themselves in the latter.

2 *Records of the Federal Convention* 239.

Madison's fear that a state legislature might abuse its authority to override majority rule was echoed throughout the ratifying conventions. In Massachusetts, one delegate worried that state legislatures,

> when faction and party spirit run high, would introduce such regulations as would render the rights of the people insecure and of little value. They might make an unequal and partial division of the states into districts for the election of representatives, or they might even disqualify one third of the electors.

2 *Elliot's Debates* 22-35 (Parsons). Another delegate noted that "a part [of Congress] should proceed directly from the people, and not from their substitutes, the legislatures; therefore the legislature ought not to control the elections," since "the [state] legislature may have a power to counteract the will of a majority of the people." 2 *id.* (Dana). In North Carolina, a delegate explained that limiting the state legislatures' authority over congressional elections would help "secure a representation from every part, and prevent any improper regulations, calculated to answer party purposes only." 1 *Annals of Congress* 768 (Ames).

The Elections Clause was thus drafted not as a grant of plenary power, but rather as a limited delegation of authority to the States, confined to procedural matters such as "notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns." *Smiley v. Holm*, 285 U.S. 355, 366 (1932). As the Court said in *U.S. Term Limits*, "the Framers understood the Elections Clause as a grant of authority to issue procedural regulations, and not as a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints." 514 U.S. at 833-34; *cf. Gralike*, 531 U.S. at 523.

This Court has made clear that judicial review of state regulation of election procedure to determine whether it satisfies these principles is more searching in the context of congressional redistricting than is similar review of state-legislative redistricting under the Equal Protection Clause. For example, while the Equal Protection Clause requires adherence to the one-person, one-vote principle in the context of state-legislative redistricting, it affords more flexibility to States to deviate from absolute population equality in pursuit of legitimate state policies than does Article I, Section 2, which applies to congressional

redistricting. Accordingly, although the Equal Protection Clause will tolerate population deviations at least as large as ten percent in the context of state-legislative redistricting, *see Brown v. Thomson*, 462 U.S. 835, 842 (1983), Article I prohibits even *de minimis* population deviations without adequate justification, *see Karcher*, 462 U.S. at 731-32.

Similarly, while the Constitution may tolerate somewhat larger departures from absolute neutrality in state-legislative redistricting, Article I strictly constrains the political faction that happens to control the state legislature at the right moment in the decennial redistricting cycle from dictating the composition of Pennsylvania's congressional delegation, at the expense of the right of "the people [to] choose whom they please to govern them." *U.S. Term Limits*, 514 U.S. at 793 (citation and internal quotation marks omitted). As Judge Niemeyer explained in a dissent that foreshadowed this Court's decisions in *U.S. Term Limits* and *Gralike*, "[t]here are fundamental differences between congressional districting under Art. I . . . [and] state legislative reapportionments." *Anne Arundel County Republican Cent. Comm. v. State Admin. Bd. of Election Laws*, 781 F. Supp. 394, 402 (D. Md. 1991) (three-judge court) (Niemeyer, J., dissenting) (citation and internal quotation marks omitted), *summarily aff'd*, 504 U.S. 938 (1992). Under Article I, "the State may not attempt to dictate the outcome of congressional elections" by drawing congressional districts that confer a substantial advantage on one political party. *Id.* at 402-03.

Act 34 exceeds these limits on a State's authority to regulate congressional elections. *First*, it was designed to "dictate electoral outcomes": Under the plan, the outcomes of Pennsylvania's congressional elections are largely preordained, giving Pennsylvania voters little more than the power to ratify results already engineered by the legislature's mapmakers. *See U.S. Term Limits*, 514 U.S. at 833-34;

Gralike, 531 U.S. at 523. *Second*, Act 34 frustrates the majority will by drawing districts that jettisoned all neutral districting criteria to maximize Republican advantage in congressional elections.

Act 34 is thus much more than a mere procedural regulation. It discriminates against Democratic candidates and voters and virtually guarantees a minority party's dominance for a decade. As such, it is an unconstitutional abuse of the Pennsylvania General Assembly's power under Article I of the Constitution.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted.

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April 25, 2003

APPENDICES

Appendix A

United States District Court,
M.D. Pennsylvania.

Richard VIETH, Norma Jean Vieth, and Susan Furey,
Plaintiffs
v.
COMMONWEALTH OF PENNSYLVANIA, et al.,
Defendants

No. 1:CV-01-2439.

Jan. 24, 2003.

OPINION AND ORDER OF THE COURT

PER CURIAM.

Before the court are Plaintiffs' motion to impose remedial districts and Defendants' motion for summary judgment. The parties have briefed the issue, as has *amicus curiae.* Additionally, the parties have presented oral argument on the instant motion. Accordingly, the matter is ripe for disposition.

I. *Background*

This case involves an ongoing challenge to Pennsylvania's congressional redistricting effort. The Commonwealth initiated the redistricting process in response to the year 2000 decennial census which indicated that Pennsylvania would lose two seats in Congress due to shifts

in the national population. Accordingly, the Commonwealth enacted its initial redistricting plan. That plan has been referred to throughout this litigation as Act 1.

Shortly thereafter, Plaintiffs initiated the instant suit seeking to have Act 1 declared unconstitutional, based on the following constitutional doctrines: (1) as an unconstitutional gerrymander in violation of the Fourteenth Amendment to the United States Constitution; (2) as a violation of the principal of the one person–one vote doctrine as that doctrine is embodied in Article I and the Fourteenth Amendment Equal Protection Clause; (3) as a violation of the Privileges and Immunities Clause of the Fourteenth Amendment; and (4) as a violation of Plaintiffs' right to political association pursuant to the First Amendment. In accordance with the requirements of 28 U.S.C. § 2284, Chief Judge Edward Becker of the United States Court of Appeals for the Third Circuit appointed the present three judge panel to hear the challenge.

By an order dated February 22, 2002, the court dismissed all of Plaintiffs' claims, save for the one person–one vote claim. *See Vieth v. Pennsylvania,* 188 F. Supp. 2d 532 (M.D. Pa. 2002) [hereinafter "*Vieth I*"]. On March 11 and 12, 2002, the court held an evidentiary hearing on that claim. On April 8, 2002, the court issued an opinion and order in which a majority of the court held that Act 1 violated the dictates of one person–one vote and enjoined its implementation. *See Vieth v. Pennsylvania,* 195 F. Supp. 2d 672, 679 (M.D. Pa. 2002) [hereinafter "*Vieth II*"]. Additionally, the court granted the Pennsylvania General Assembly three weeks to submit a plan that would remedy the constitutional deficiencies in Act 1. *Id.*

Accordingly, on April 17, 2002, the General Assembly enacted a revised congressional redistricting plan. The next day, Governor Schweiker signed into law the new plan, Act 34. That bill repealed Act 1 and replaced it with Act 34's boundaries. Defendants then petitioned the court to stay its decision regarding Act 1 and to allow the 2002 congressional elections to proceed under Act 1's boundaries. Because primary elections were set to be held on May 21, 2002, the court agreed to stay its decision regarding Act 1 in order to allow the primary election to take place as scheduled. Therefore, Act 34 was not in operation for the congressional elections that took place in November of 2002. However, Act 34 is scheduled to govern the next round of congressional elections in November of 2004.

Ostensibly, Act 34 is a zero-deviation congressional redistricting plan. That is, the district-to-district populations vary by only one person, the minimum variation given that Pennsylvania's population does not divide into nineteen even districts. On April 22, 2002, Plaintiffs filed a motion for the court to impose remedial districts or, in the alternative, to begin remedial hearings. Through information presented in that motion, the court learned for the first time of a decision by the Court of Common Pleas for Armstrong County, Pennsylvania. That decision was issued on March 15, 2002–after enactment of Act 1, but before Act 34's enactment. The decision effectively altered the boundary between two voter precincts in Armstrong County–South Buffalo District Western and South Buffalo District Eastern. Those two precincts also represented the line dividing the 3rd and 12th Congressional Districts under both Act 1 and Act 34. The alteration had the effect of moving forty–nine people from the 12th Congressional District to the 3rd Congressional

District. Apparently, this would have resulted in Act 34 having a deviation of ninety-seven between its most and least populated districts. This number would have represented a deviation over fives times greater than that in Act 1. On May 16, 2002, the Commonwealth enacted another statute, Act 44, seeking to retroactively rescind the Armstrong County Court's ability to alter voter precinct boundaries.

The Board of Elections for Armstrong County then petitioned the Armstrong County Court of Common Pleas to vacate its decision altering the voter precinct boundary. By an order dated July 29, 2002, the Armstrong County Court of Common Pleas denied the motion to vacate its decision. Eventually, this court scheduled a hearing for January 9, 2003 for the parties to present oral argument regarding whether Act 34 remedied the constitutional defect that the court found rendered Act 1 infirm.

In the interim, Governor Schweiker signed Act 150 into law on December 9, 2002. That statute amended § 506 of the Pennsylvania Election Code to add the following statement:

> In administering elections for the nomination and election of candidates for the United States House of Representatives and the General Assembly, county boards of election shall adhere to the following rule: Where an election district is used in or pursuant to a congressional redistricting statute or the final plan of the Legislative Reapportionment Commission to define the boundary of a congressional district or state legislative district, the boundary of such election shall be the boundary existing and recognized by the Legislative

> Reapportionment Commission for the adoption of its final plan. The boundaries of the Congressional districts, as established by statute, and state legislative districts as set forth in the final plan of the Legislative Reapportionment Commission shall remain in full force and effect for use thereafter until the next reapportionment or redistricting as required by law and shall not be deemed to be affected by any action taken pursuant to this title.

Therefore, Act 150 had the apparent effect of negating the alteration of the boundary dividing the 3rd and 12th Congressional Districts.[1] Defendants subsequently filed a motion for summary judgment on December 20, 2002. On December 30, 2002, the court issued an order indicating that the parties should be prepared to present oral argument on this motion at the January 9 hearing and that Plaintiffs should file their brief in opposition to summary judgment before the date of the hearing. On January 7, 2002, Plaintiffs filed their response to Defendants' summary judgment motion. On January 9, 2002, the court held its hearing.

The court's order of April 8, 2002 gave Defendants a period of time to "enact and submit for review and final approval by this Court, a congressional redistricting plan in conformity with this opinion." *See Vieth II*, 195 F. Supp. 2d at 679. In response, the Commonwealth enacted Act 34. In accordance with the matters discussed at the January 9

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[1] Plaintiffs conceded at oral argument–and in their brief–that Act 150, if validly enacted, eliminated any one person-one vote issue with reference to Act 34. (*See* Pls. Br. in Opp. Defs. Mot. for Sum. J. at 9 ("Act 150, if it were validly enacted and interpreted as Defendants suggest, would eliminate any one–person, one–vote concerns raised by Act 34.").)

hearing, the court finds that Act 34 sufficiently remedies the constitutional deficiencies of Act 1. Our hearing, was basically a review of Act 34 and we are now giving final approval to it. For the reasons stated below, the court finds that Act 34 does not violate any constitutional doctrine. The court, therefore, will deny Plaintiffs' motion to impose remedial districts. This decision renders Defendants' motion for summary judgment moot. The court, therefore, will not address that motion.

II. *Analysis*

A. Population Deviation

Article I, § 2 of the United States Constitution requires that members of Congress be chosen with equal representation for equal number of people. *Wesberry v. Sanders*, 376 U.S. 1, 7-8, 84 S. Ct. 526, 11 L. Ed. 2d 481 (1964). This constitutional mandate, commonly referred to as the one person–one vote principle, requires "that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." *Id.* As the Supreme Court has explained:

> [T]he "nearly as practicable" standard requires that the State make a good-faith effort to achieve precise mathematical equality.... Unless population variances among congressional districts are shown to have resulted, despite such effort, the State must justify each variance, no matter how small.... [Article I, § 2, therefore] permits only the limited population variances "*which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown.*"

Kirkpatrick v. Preisler, 394 U.S. 526, 530-31, 89 S. Ct. 1225, 22 L. Ed. 2d 519 (1969) (emphasis added).

Thus, in a challenge to a congressional redistricting plan, the plaintiff bears the initial burden of proving: (1) that a deviation exits in district-to-district population which could have been reduced; and (2) the deviation is not a result of a good faith effort to achieve exact equality in district-to-district population. *See Karcher v. Daggett*, 462 U.S. 725, 730, 103 S. Ct. 2653, 77 L. Ed. 2d 133 (1983) (holding that the plaintiff's initial burden is to prove that the differences in district-to-district population could have been reduced or eliminated by "a good-faith effort to draw districts of equal population"). If the plaintiffs can meet its burden, then the State must prove that some legitimate reason justifies the variances. *See id.* at 731, 103 S. Ct. 2653.

As to Act 1, the court unanimously found that Plaintiffs satisfied their initial burden. *See Vieth II*, 195 F. Supp. 2d at 676, 679. Crucial to this holding was the testimony of Dr. John Memmi, the Republican House Caucus's congressional redistricting map-maker. Dr. Memmi testified that the Republican House leaders instructed him to stop shifting populations between districts once the process yielded a map with a nineteen person deviation. Although the court noted that such a deviation is minuscule given that Pennsylvania's census population totaled 12,281,054, it also noted that "*Karcher* specifically holds that 'there are no *de minimis* variations which could practically be avoided, but nonetheless meet the standard of Art. I, § 2 without justification.'" *Id.* at 676 (quoting *Karcher*, 462 U.S. at 734, 103 S. Ct. 2653). Because the population deviation in Act 1

was not the result of a good faith effort to achieve precise mathematical equality in district-to-district populations, the court held that Plaintiffs satisfied their initial burden under the *Karcher/Kirkpatrick* framework. *Id.*

Therefore, the burden switched to Defendants to justify the minuscule deviation in Act 1. A majority of the court held that Defendants failed to proffer any legitimate justification for the deviation. *Id.* at 678. The dissenting member of the court, however, found that Defendants justified the deviation by demonstrating that making Act 1 a zero deviation map would entail splitting twenty additional voter precinct districts; thus resulting in additional administrative costs and voter confusion. *Id.* at 680 (Yohn, J. dissenting in part).[2]

As to Act 34, the court finds that Plaintiffs have failed to satisfy their burden. First, Plaintiffs have failed to demonstrate that the variations in district-to-district population could have been reduced. Act 34 is a zero–deviation plan. They also argue that the Armstrong County Court's decision results in Act 34 having a ninety-seven person deviation. In response, Defendants contend that Act 150 effectively nullifies that change, forcing county boards of elections to use the same boundaries that were established by the Legislative Reapportionment Commission prior to the enactment of both Act 1 and Act 34. We do not need to decide this issue because even if Act 150 could not undo the Armstrong County Court's alteration, the court finds that Act

[2] The majority, in contrast, noted evidence indicating that it was possible to draw a zero deviation map that split no voter precincts. *See id.* at 677 (noting that "it is possible to draw a congressional district map with zero deviation and no precinct splits").

34, Act 44, and Act 150 represent "a good faith effort to draw districts of equal population." *Karcher*, 462 U.S. at 730, 103 S. Ct. 2653.

The court is convinced that the General Assembly passed Act 34 expecting that it would be a zero-deviation map. This is evidenced by the fact that since the Armstrong County Court's decision, the General Assembly has twice, through enactment of Acts 44 and 150, sought to undo the alteration brought about by that decision. These three statutes, when read together, evidence a good–faith effort to draw districts of equal population, even if Acts 44 and 150 are later declared invalid as violations of the Pennsylvania Constitution as Plaintiffs argue they should be.[3] As to Act 34, unlike Act 1, there is no evidence indicating that the General Assembly intended that there be a deviation or that it considered the slight deviation a non–issue. *See Vieth II*, 195 F. Supp. 2d at 676 (discussing Dr. Memmi's testimony and concluding that "Defendants did not put forth a good-faith effort to draw districts of equal population"). Likewise, there

[3] The court notes that Act 34 represents a good faith effort to achieve zero deviation, but like its predecessor, Act 1, jettisons every other neutral non-discriminatory redistricting criteria that the Supreme Court has endorsed in one person-one vote cases. *See Karcher*, 462 U.S. at 753-59, 103 S. Ct. 2653 (Stevens, J. concurring) (holding that compliance with neutral criteria demonstrates that the legislature's intention is designed to further non-discriminatory policies); *see also Vieth II*, 195 F. Supp. 2d at 678 ("[I]t is clear that *Karcher*'s neutral criteria were not high on the priority list in enacting Act 1.") Despite an opportunity to improve upon the numerous deficiencies of Act 1, Defendants have returned to this court with essentially the same map. However, this map does not possess the same population deviations as Act 1. Therefore, Plaintiffs have failed to meet their initial burden under *Karcher*, and the court has no opportunity to address these criteria as they relate to Act 34.

is no evidence in the record indicating that members of the General Assembly, when passing Act 34, relied on anything other than the population data prepared from the census tracts compiled by the bi-partisan Legislative Data Processing Center in considering the population of election precincts and congressional districts. Moreover, there is no evidence in the record which suggests that members of the legislature were even aware of the change in the election districts in South Buffalo Township when they voted to pass Act 34 on April 17, 2002. There is simply no evidence in the record indicating that the General Assembly intended to enact anything other than a zero-deviation congressional redistricting plan. The court, therefore, finds that Act 34 represents a good faith effort to achieve precise mathematical equality in congressional district-to-district population. Accordingly, Plaintiffs have failed to satisfy their burden.

Because the court finds that Plaintiffs have failed to satisfy their initial burden under the *Karcher* test, no inquiry regarding justification is needed for there is nothing to justify. Act 34 complies with the dictates of the one person–one vote doctrine.

B. Plaintiffs' Challenge to Act 150 based on Pennsylvania Constitutional Law

Plaintiffs challenge the validity of Act 150 on the basis that it violates a litany of Pennsylvania Constitutional doctrines. However, because the court has already held that Acts 34, 44 and 150, when read in conjunction, evidence a good-faith effort to achieve population equality, the validity of these statutes is immaterial. *See Kirkpatrick*, 394 U.S. at 530-31, 89 S. Ct. 1225 ("[T]he 'nearly as practicable'

standard requires that the State make a good-faith effort to achieve mathematical equality. *Unless population variances among congressional districts are shown to have resulted despite such effort,* the State must justify each variance, no matter how small." (emphasis added)).

The court, therefore, need not decide these issues of Pennsylvania law because even if they were resolved in Plaintiffs' favor, the court finds that the three statutes at issue–Acts 34, 44, and 150–at the very least represent a good-faith effort to achieve equal district-to-district population. Even if Acts 44 and 150 were to be declared invalid, this would have no effect on the claim that Act 34 violates the one person-one vote doctrine.

C. Partisan Gerrymandering

Plaintiffs also seek to preserve their argument that Act 34 is a partisan gerrymandering and, thus, violates the Equal Protection Clause of the Fourteenth Amendment. As discussed earlier, Plaintiffs presented the same argument with respect to Act 1. In *Vieth I*, the court dismissed this claim because "Plaintiffs [did not] allege facts indicating that they have been shut out of the political process and, therefore, they cannot establish an actual discriminatory effect on them," as required by *Davis v. Bandemer*, 478 U.S. 109, 106 S. Ct. 2797, 92 L. Ed. 2d 85 (1986). *Vieth I*, 188 F. Supp. 2d 532, 547 (M.D. Pa. 2002). Act 34 is essentially the same redistricting plan as Act 1, except for the fact that Act 34 does not possess an avoidable population deviation. Accordingly, whatever partisan effect Act 1 had, Act 34 will have as well. The court, therefore, incorporates by reference its discussion in *Vieth I* regarding partisan gerrymandering

and holds that the undisputed facts in this case are insufficient to establish such a claim. *See id.* at 543-47.

IV. *Conclusion*

Act 34 does not violate the principal of one person-one vote. Therefore, Act 34 remedies Act 1's constitutional defect. Additionally, Act 34 is not a partisan gerrymandering, at least as far as that term is defined by the Supreme Court in *Davis v. Bandemer*, 478 U.S. 109, 106 S. Ct. 2797, 92 L. Ed. 2d 85 (1986). Therefore, the court will deny Plaintiff's motion to impose remedial districts. Because the court has decided that Act 34 cures the constitutional defect found by the court in its memorandum and order of April 8, 2002, Defendants' motion for summary judgment is moot. An appropriate order will issue.

ORDER

In accordance with the attached opinion of the court, IT IS HEREBY ORDERED THAT:

Plaintiffs' motion to impose remedial district is DENIED. Act 34 does not violate the United States Constitution;

Defendants' motion for summary judgment is DENIED AS MOOT; and

In conformity with court's order of April 8, 2002, the Congressional Redistricting Plan contained in Act 34 is given final approval. The Clerk of Court is direct to enter judgment in favor of Defendants and against Plaintiffs.

Appendix B

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, NORMA JEAN VIETH, and SUSAN FUREY, Plaintiffs v. COMMONWEALTH OF PENNSYLVANIA, *et al.*, Defendants

CIVIL NO.1:CV-01-2439

February 22, 2002, Decided

February 22, 2002, Filed

OPINION OF THE COURT[1]

Before the court are: (1) a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) filed by Defendants Commonwealth of Pennsylvania, Pennsylvania Governor Mark Schweiker, Secretary of State Kim Pizzingrilli, and Commissioner of the Bureau of Commissions, Elections, and Legislation Richard Filling ("Executive Officers"); (2) Defendant Executive Officers' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6); (3) a Rule 12(b)(1) motion to dismiss filed by Defendants Matthew Ryan and Robert Jubelirer

[1] RAMBO, SENIOR DISTRICT JUDGE authored the Opinion of the Court in which NYGAARD, CIRCUIT JUDGE and YOHN, DISTRICT JUDGE join.

("Presiding Officers")[2]; and (4) Defendant Presiding Officers' motion to dismiss pursuant to Rule 12(b)(6). The parties have briefed the issues, and the matter is ripe for disposition.

I. Background

A. Factual Allegations

Plaintiffs Richard Vieth, Norma Jean Vieth, and Susan Furey brought this action, pursuant to 42 U.S.C. § 1983, against Defendant Commonwealth of Pennsylvania, Defendant Executive Officers, and Defendant Presiding Officers. Plaintiffs' claims arise out of the enactment of Pennsylvania Senate Bill 1200 ("Act 1"), Pennsylvania's Congressional redistricting plan, which Governor Schweiker signed into law on January 7, 2002.

Plaintiffs allege the following facts in their complaint: On December 28, 2000, the United States Secretary of Commerce reported the results of the year 2000 decennial national census to then President William J. Clinton. The tabulation indicated that as of April 1, 2000 Pennsylvania had a resident population of 12,281,054 persons. Accordingly, the Secretary of Commerce's report allotted Pennsylvania only nineteen Congressional representatives resulting in a decrease of two representatives from the results of the 1990 census.

Thus, the responsibility for adopting a Congressional redistricting plan fell to Pennsylvania's General Assembly,

[2] Defendant Ryan is the Speaker of the Pennsylvania House of Representatives, and Defendant Jubelirer is the Lieutenant Governor of the Commonwealth of Pennsylvania. Thus, Speaker Ryan presides over the Pennsylvania House of Representatives, and Lieutenant Governor Jubelirer presides over the Pennsylvania State Senate.

which failed to reach a compromise during the regular 2001 legislative session. The State House of Representatives passed one version, and the State Senate passed a different plan. The General Assembly, however, adjourned at an impasse on December 13, 2001.[3]

In the meantime, prominent national figures in the Republican party – such as congressional Speaker of the House Dennis Hastert, Congressman Thomas M. Davis III, United States Senator Rick Santorum, and Karl Rove, political consultant to current President George W. Bush – began pressuring Governor Schweiker, a Republican, and the Republican members of the General Assembly to adopt the Senate redistricting plan as a punitive measure against Democrats for having enacted apparently pro-Democrat redistricting plans in other states. In response, Republican members of the state House and Senate began working together to reach an agreement. In the process, they effectively ignored all Democratic members of the General Assembly, including members of the Conference Committee appointed to resolve the impasse between the competing plans.

At the Conference Committee meeting on January 2, 2002, the Republicans presented the final version ("Senate Bill 1200") of the new redistricting plan. The Democratic members of the Conference Committee had no input on this version. Although the bill passed the Conference Committee, thus sending it for a vote before both houses, all Democratic members of the Conference Committee voted against the version, and all Republicans voted in favor. On January 3, 2002, the General Assembly passed Senate Bill 1200. On

[3] Plaintiffs also allege that the Republican party enjoys majorities in both state houses and holds the Governor's office.

January 7, 2002, Governor Schweiker signed the bill into law as Act 1.

Plaintiffs, registered Democrats and Pennsylvania citizens, subsequently filed this suit to enjoin Act 1's implementation. Plaintiffs Richard and Norma Jean Vieth both reside in Lebanon County, Pennsylvania, in a portion of the county that will fall in District 16 under Act 1. Plaintiff Susan Furey resides in Montgomery County, Pennsylvania. Under Act 1's precursor, Plaintiff Furey's residence fell in District 13. However, under Act 1, Plaintiff Furey now resides in District 6. Defendants are the Commonwealth of Pennsylvania and various executive and legislative officers who were either responsible for enacting Act 1 or will be responsible for implementing it during the next Congressional election.

According to the results of the 2000 census, Pennsylvania has a population of 12,281,054. When divided equally among the nineteen Congressional districts, this results in a population of 646,371 or 646,372 people per district.[4] However, under Act 1, District 7 would have a population of 646,380. On the other hand, Districts 1, 2, and 17 would each have a population of 646,361. Thus, under Act 1 there is a nineteen-person deviation between the least populated and most populated districts. While this is less than the deviation under the 1992 plan, unlike that plan, Act 1 splits eighty-four local governments (including twenty-five counties and fifty-nine cities, boroughs or townships) among different congressional districts. Montgomery County, where Plaintiff Furey resides, is divided up among six different congressional districts. Under the 1992 plan, only twenty-seven local governments (nineteen counties and eight cities, townships or boroughs) were split between different districts.

[4] The actual result is 646,371.263157.

Additionally, Districts 4, 6, 9, 10, 11, 13, 14, 15, and 19 have populations of over 646,372 without any legitimate justification.

Currently, the two major parties hold nearly equal support in the Commonwealth. Of voters registered with one of the two major parties, 53.6% are registered Democrats and 46.4% are registered Republicans. In November 2000, during the last election held under the 1992 plan, voters in Pennsylvania elected eleven Republican congressman and ten Democratic congressman to serve in Washington. In those twenty-one congressional races, Democrats garnered 50.6% of the aggregate vote, with Republicans receiving 49.4%. Democrats also received more total votes than Republicans, by a margin of 50.1% to 49.9%, in the five statewide races in 2000.[5] Yet despite this nearly equal split, Democrats will likely win only six of Pennsylvania's nineteen congressional seats. Thus, Act 1 is "designed to ensure that Republicans would win at least 13 of the 19 congressional seats." (Amd. Compl. at ¶ 32.) "It cements Republican power and effectively reduces Democrats to being a small minority of the Commonwealth's congressional delegation for the coming election and likely the coming decade." (*Id.* at ¶ 33.)

As a direct result, Act 1 "dramatically affects the Democratic Party's prospects for success in congressional elections in Pennsylvania ... and will reduce the choices that voters ... will have in Pennsylvania elections." (*Id.* at ¶ 35.)

[5] In 2000, Pennsylvania held statewide elections for President, one United States Senate position, State Attorney General, State Auditor General, and State Treasurer. Democratic candidates won the elections for President and Auditor General, and Republican candidates won the elections for Attorney General, State Treasurer and United States Senator.

"Because of the bias ... the Democratic Party will have greater difficulty in fielding competitive candidates." (*Id.*) Thus, Act 1 operates "to essentially shut Democrats and Democratic voters out of the political process." (*Id.* at ¶ 36.) Plaintiffs, in particular, "will suffer harm ... [because they] will now be increasingly represented by members of Congress who do not represent their views." (*Id.* at ¶ 37.)

B. Procedural History

On December 21, 2001, Plaintiffs filed the original complaint in this matter. Subsequently, Plaintiffs filed a motion to convene a three-judge panel pursuant to 28 U.S.C. § 2284(b)(1). By an order dated January 23, 2002, the court granted Plaintiffs' motion and requested that Chief Judge Edward Becker of the Third Circuit Court of Appeals appoint the members of the panel. Chief Judge Becker appointed the current panel: The Honorable Richard Nygaard, United States Circuit Judge for the Third Circuit Court of Appeals; The Honorable William H. Yohn, Jr., United States District Judge for the Eastern District of Pennsylvania; and The Honorable Sylvia Rambo, Senior United States District Court Judge for the Middle District of Pennsylvania.

On January 11, 2002, Plaintiffs filed an amended complaint alleging violations of 42 U.S.C. § 1983.[6] In that document, Plaintiffs allege that Act 1 violates: (1) Article I,

[6] Plaintiffs include the violation of § 1983 under a separate count. However, "§ 1983 does not create substantive rights but 'merely redresses the deprivation of ... rights. . . created by the Constitution or federal statute.'" *Ridgewood Bd. of Educ. v. N.E. for M.E.*, 172 F.3d 238, 251-52 (3d Cir. 1999) (quoting *W.B. v. Matula*, 67 F.3d 484, 493 (3d Cir. 1995)). Therefore, the court will construe Plaintiffs' amended complaint as an action brought pursuant to § 1983 to vindicate their rights under the Constitution.

§ 2 of the United States Constitution; (2) the Equal Protection Clause of the Fourteenth Amendment; (3) the Privileges and Immunities Clause of the Fourteenth Amendment; and (4) Plaintiffs' right to free association guaranteed by the First Amendment. Accordingly, Plaintiffs seek the following declaratory and injunctive relief: (1) a declaratory judgment that Act 1 violates Plaintiffs' constitutional rights; (2) a permanent injunction preventing Defendants from implementing Act 1; (3) a court order establishing a new congressional redistricting plan and enjoining Defendants from enacting or implementing a new plan until the 2004 elections; and (4) attorney's fees and court costs.

On January 22, 2002, Plaintiffs filed a motion requesting that the court set a deadline of February 18, 2002 for the state courts to conclude all litigation pertaining to Act 1.[7] Additionally, Plaintiffs filed an expedited motion for appointment of the three-judge panel. By an order dated January 24, 2002, the court denied Plaintiffs' motion to set a deadline and denied, as moot, Plaintiffs' expedited motion to convene a three-judge panel. By a separate order issued on January 24, 2002, the court set the case for an evidentiary hearing to be conducted on February 11 and February 12, 2002.

Also on January 24, 2002, both Defendant Presiding Officers and Executive Officers filed the separate motions to dismiss which are currently before the court. Defendant Presiding Officers followed this with a motion to abstain, filed on January 25, 2002. By separate orders, the court

[7] Currently, there is a state court action pending which attacks Act 1 on the basis that it violates the Pennsylvania Constitution. *See Efer v. Commonwealth of Pennsylvania*, 10 M.D. 2002 (Pa. Commw. Ct.).

established an expedited briefing schedule for both the motions to dismiss and the motion for abstention.

Defendant Presiding Officers filed a motion for reconsideration and *vacatur* of the court's January 24, 2002 order that set the captioned matter for an evidentiary hearing starting February 11, 2002. The court held a telephone conference on January 29, 2002, which all parties attended, in order to discuss the reconsideration motion. During the conference call, counsel informed the court that the Supreme Court of Pennsylvania issued an order that afternoon requiring the Commonwealth Court to hold a hearing on Act 1 by February 1, 2002. Additionally, the Supreme Court of Pennsylvania ordered the Commonwealth Court to issue findings of fact and conclusions of law by February 8, 2002 addressing the validity of Act 1 under the Pennsylvania Constitution. In light of these circumstances, by an order dated January 30, 2002, the court delayed the evidentiary hearing until March 11, 2002 and set an expedited discovery schedule.

II. Discussion

A. Motion to Dismiss pursuant to Rule 12(b)(1)

1. Legal Standard

"A motion to dismiss under Rule 12(b)(1) challenges the jurisdiction of the court to address the merits of the plaintiff's complaint." *Ballenger v. Applied Digital Solutions, Inc.*, 2002 U.S. Dist. LEXIS 1518 at *8 (D. Del. January 31, 2002). The motion should be granted where the asserted claim is "in substantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy." *Coxson v. Commonwealth of Pennsylvania*, 935 F. Supp. 624, 626

(W.D. Pa. 1996) (citing *Growth Horizons v. Delaware County*, 983 F.2d 1277, 1280-81 (3d Cir. 1993)). Additionally, a motion to dismiss under Rule 12(b)(1) may present either a facial or factual challenge to subject matter jurisdiction. *See Mortensen v. First Federal Savings and Loan*, 549 F.2d 884, 891 (3d Cir. 1977).

This case presents a facial challenge because Defendants do not dispute, at this juncture, the existence of the jurisdictional facts alleged in the complaint. *See* 2 James Wm. Moore *et al.*, Moore's Federal Practice ¶ 12.30[4] (3d ed. 1999) (explaining the difference between a facial and factual challenge to subject matter jurisdiction pursuant to Rule 12(b)(1)). Therefore, the court must accept the facts alleged in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. *Zinerman v. Burch*, 494 U.S. 113 (1990); *Markowitz v. Northeast Land Co.*, 906 F.2d 100, 103 (3d Cir. 1990).

2. Partisan Gerrymandering Claim

In their motions to dismiss, Defendants contend that claims of partisan gerrymandering are non-justiciable. Thus, according to Defendants, the court lacks subject matter jurisdiction to hear such claims. However, Defendants also acknowledge that in *Davis v. Bandemer*, 478 U.S. 109 (1986), the Supreme Court held that such claims are justiciable as equal protection violations. Instead of arguing for dismissal, Defendants wish to have their objections to this holding noted on the record in case they seek to raise the issue at a later time. Accordingly, the court notes the objection.

3. Eleventh Amendment Immunity

Defendant Commonwealth of Pennsylvania seeks dismissal of the claims against it arguing that it is immune

from suit in federal court based on Eleventh Amendment sovereign immunity. At a minimum, the Eleventh Amendment stands for two propositions: "first, that each State is a sovereign entity in our federal system; and second, that it is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent." *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54 (1996) (internal quotations omitted). Thus, the Eleventh Amendment "prohibits federal courts from entertaining suits by private parties against States and their agencies." *Alabama v. Pugh*, 438 U.S. 781, 791 (1978). This bar applies regardless of whether the plaintiff seeks monetary damages or injunctive relief against a State. *Seminole Tribe*, 517 U.S. at 58 (citing *Cory v. White*, 457 U.S. 85, 90 (1982) ("It would be a novel proposition indeed that the Eleventh Amendment does not bar a suit to enjoin the State itself simply because no money judgment is sought.")).

Under certain circumstances, the Eleventh Amendment does not bar federal courts from entertaining suits against States. First, suit is permitted where the State has waived its immunity. *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985). Second, sovereign immunity does not apply if Congress validly abrogates it through its enforcement powers pursuant to the Fourteenth Amendment. *Seminole Tribe*, 517 U.S. at 57-73. Third, Eleventh Amendment immunity is inapplicable where the plaintiff sues State officials in their official capacity seeking only prospective relief. *Ex Parte Young*, 209 U.S. 123 (1908).

In this case, Plaintiffs have brought suit against the Commonwealth thereby implicating its sovereign immunity. Plaintiffs do not contend that the Commonwealth has waived its immunity, nor could they. Pennsylvania has clearly reserved its power to invoke sovereign immunity. 42 Pa.

Cons. Stat. Ann. § 8521(b) (2001). Likewise, Plaintiffs could not contend that by enacting § 1983, Congress validly abrogated Pennsylvania's sovereign immunity. *See Quern v. Jordan*, 440 U.S. 332, 345 (1978) ("[Section] 1983 does not explicitly and by clear language indicate on its face an intent to sweep away the immunity of the States; nor does it have a history which focuses directly on the question of state liability and which shows that Congress considered and firmly decided to abrogate the Eleventh Amendment immunity of the States."). *Ex Parte Young* is not implicated here. The Commonwealth is the only defendant to raise sovereign immunity as a defense.

Because the Eleventh Amendment bars suit against the Commonwealth of Pennsylvania under the circumstances present in this case, the court will dismiss the action against the Commonwealth for lack of subject matter jurisdiction.

4. Standing

The constitutional minimum of standing contains three elements:

> First, the plaintiff must have suffered an "injury in fact" -- an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of ... Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (citations omitted). The party who seeks the exercise of jurisdiction bears the burden of alleging facts that "he is a proper party to invoke judicial resolution of the dispute."

Warth v. Seldin, 422 U.S. 490, 518 (1975); *see also McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936).

a. Partisan Gerrymandering

Defendants contend that Count II of Plaintiffs' amended complaint, alleging that Act 1 constitutes impermissible partisan gerrymandering in violation of the Equal Protection Clause, must be dismissed because Plaintiffs lack standing. The crux of Defendants' argument is that Plaintiffs do not have standing to challenge Act 1 as a whole.[8]

Defendants would have the court apply the standing requirement for racial gerrymandering cases to those involving only partisan gerrymandering. In the context of racial gerrymandering, in order to have standing a plaintiff must allege that he resides in a district that has been impermissibly gerrymandered on the basis of race. *United States v. Hays*, 515 U.S. 737, 743-44 (1995). Racial gerrymandering is prohibited because, where a district is created solely to serve the perceived common interests of one racial group, it is reasonable to presume that elected officials in such districts will ignore the plights of non-members of the dominant racial group. This stems from the corollary that racial classifications are disfavored in general because they threaten to stigmatize individuals according to their race and incite racial hostility. *Id. at* 744 (citing *Shaw v. Reno*, 509 U.S. 630, 648 (1993)). Therefore, only where a person resides in a district created to cater to one race over

[8] Defendants also argue that Plaintiffs have failed to establish standing because Plaintiffs "allege only group harm (i.e., to Democrat voters & the Democrat Party), not harm to their individual interests." (Def. Pres. Offs. Br. in Sup. Mot. to Dis. at 6.) However, Defendants overlook the fact that Plaintiffs allege harm to them as individual members of the Democratic party.

another can he allege to have suffered the particularized harm necessary to justify standing. "On the other hand, where a plaintiff does not live in such a district, he ... does not suffer those special harms, and any inference that the plaintiff has personally been subject to a racial classification would not be justified absent evidence tending to support that inference." *Id.* at 745.

The reasoning underlying claims based on racial gerrymandering, however, is quite distinct from the type of injury that partisan gerrymandering inflicts. The very nature of a claim of partisan gerrymandering contemplates a harm which extends beyond that inflicted upon a particular voter. Rather, such a claim envisions harm to a particular class of voters that results in impermissibly denying them participation in the political process. The Supreme Court recognized this principal in *Davis v. Bandemer*, the first case holding that partisan gerrymandering may be actionable as a violation of equal protection. In that decision, the Court stated: "Although the statewide discrimination here was allegedly accomplished through the manipulation of individual district lines, the focus of the equal protection inquiry is necessarily somewhat different from that involved in the review of individual districts." 478 U.S. at 127.[9]

In equal protection claims based on partisan gerrymandering, the allegation is that an identifiable political group has had its political voice silenced through the drawing of elective district lines. Although this involves, to a certain extent, manipulation of individual district lines, the

[9] Moreover, we note that to the extent that an individual plaintiff is required to live in an allegedly gerrymandered district, Plaintiffs have met that requirement. Plaintiff Furey lives in District 6. (Amd. Compl. at ¶ 4.) Plaintiffs allege that District 6 is one of the gerrymandered districts. (Amd. Compl. at ¶ 22.)

injury is done to the entire identifiable political group. The constitutional injury lies not in inequality among various individual districts, but rather in the configuration of the districts as a whole when they serve to disadvantage a certain class of voters. Therefore, unlike a claim for race-based gerrymandering, a plaintiff in a partisan gerrymandering claim need not allege that he lives in a particular district that has been gerrymandered on the basis of political affiliation.

Additionally, we do not agree with Defendants that adopting such a standing rule would endow nationwide standing upon all individual members of the major political parties. In the context of partisan gerrymandering, to satisfy the particularized harm requirement, a plaintiff must allege that he or she is a member of a politically salient class whose geographical distribution is sufficiently ascertainable that it could have been taken into account when drawing district boundaries. In this case, Plaintiffs allege that they are citizens of Pennsylvania and members of the Democratic party. Additionally, they allege that Defendants have utilized the congressional redistricting process to vanquish Plaintiffs' political voice in Congress. These allegations, together, are sufficient to satisfy the particularized injury requirement for standing.

b. Remaining Claims

As to the remaining claims, Defendants intimate that Plaintiffs do not have standing because the injury that they allege is "speculative and generalized," (Def. Exec. Offs. Br. in Sup. Mot. to Dis. at 7,) and is "a purely hypothetical harm, tied to the allegation of partisan gerrymandering." (Def. Pres. Offs. Br. in Sup. Mot to Dis. at 7.) We disagree.

Defendants are correct that Plaintiffs do not allege that they have suffered an injury in fact as of this moment. However, Act 1 has yet to be implemented. Plaintiffs have

clearly alleged that if Act 1 is allowed to be implemented it will cause a very real harm. Principally, Plaintiffs claim that their vote has been diluted in violation of the one person-one vote requirement of Article I. That harm is completely distinct from the harm that would be inflicted as a result of partisan gerrymandering. Act 1 has been enacted and, as of now, is scheduled to be used as the congressional district plan in the 2002 elections. If Act 1 is – as Plaintiffs have alleged – unconstitutional, then Plaintiffs have alleged a harm that is "actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560. Therefore, the court has no problem concluding that Plaintiffs have alleged an injury in fact.[10] Likewise, Plaintiffs have sufficiently pleaded a causal connection between Defendants' conduct and the injury. Finally, as will be discussed below, *see infra* at Part II.B.7, the court has the remedial powers to redress the injuries that Plaintiffs have alleged. In short, the court finds that the allegations of Counts I, III, and IV of Plaintiffs' amended complaint satisfy the constitutional minimum of standing.

B. Motion to Dismiss pursuant to Rule 12(b)(6)

1. Legal Standard

In deciding a motion to dismiss pursuant to Federal Rule 12(b)(6), the court is required to accept as true all of the factual allegations in the complaint and all reasonable inferences that can be drawn from the face of the complaint. *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996). "The complaint will be deemed to have alleged sufficient facts if it

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[10] As to the one person-one vote claim, the court notes that no Plaintiff resides in an under-populated district. Additionally, Plaintiffs have alleged that there are districts that are under populated. Therefore, according to Plaintiffs' allegations, they have suffered an injury in fact due to vote dilution.

adequately put[s] the defendant[s] on notice of the essential elements of the plaintiff's cause of action." *Id.* The court will not dismiss a complaint for failure to state a claim "unless it appears beyond a doubt that the plaintiff[s] can prove no set of facts in support of [their] claim that would entitle [them] to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

"In determining whether a claim should be dismissed under [Federal] Rule 12(b)(6), a court looks only to the facts alleged in the complaint and its attachments without reference to other parts of the record." *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994). However, the court may consider "undisputedly authentic document[s] that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the [attached] document[s]." *Pension Ben. Guar. Corp. v. White Consol. Ind*, 998 F.2d 1192, 1196 (3d Cir. 1993).

2. Article I (One person-One vote)

In Count I of their amended complaint, Plaintiffs allege that Act 1 violates Article I, § 2 of the United States Constitution[11] by diluting the vote of persons living in over-populated congressional districts. Defendants contend that this claim must be dismissed because Plaintiffs have failed to allege that: (1) a plan with smaller population deviations than Act 1 could have been enacted; or (2) that the deviations in Act 1 were unavoidable.

Article I, § 2, requires that members of Congress are chosen with equal representation for equal numbers of people. *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1963). This

[11] In relevant part, Article I, § 2 states: "[Congressional] Representatives ... shall be apportioned among the several States which may be included within this Union, according their respective Numbers. ..."

Constitutional mandate, commonly referred to as the one person-one vote principle, requires "that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." *Id.* As the Supreme Court has explained:

> The "nearly as practicable" standard requires that the State make a good-faith effort to achieve precise mathematical equality. ... Unless population variances among congressional districts are shown to have resulted, despite such effort, the State must justify each variance, *no matter how small*.... [Article I, § 2, therefore] permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown."

Kirkpatrick v. Preisler, 394 U.S. 526, 530-31 (1969) (emphasis added).

Thus, in a challenge to a congressional redistricting plan, the plaintiff bears the initial burden of proving that the differences in district-to-district population could have been reduced or eliminated by "a good-faith effort to draw districts of equal population." *Karcher v. Daggett*, 462 U.S. 725, 730 (1983). If the plaintiffs can demonstrate that the differences in population were not the result of a good-faith effort to achieve equality in population between the various districts, then the State must prove that some legitimate reasons justifies the variances. *Id.* at 731.

Defendants argue that this claim should be dismissed because Plaintiffs have not offered a plan with smaller deviations, and Plaintiffs have not demonstrated that the deviations in Act 1 were unavoidable. According to Defendants, although there are variations in Act 1, they equal

0.00%. Therefore, "as a matter of law, the district populations are equal and there is no significant variance between districts to be explained." (Def. Pres. Offs. Br. in Sup. Mot. to Dis. at 8.) However, the Supreme Court has squarely rejected any *de minimis* exception to the requirement of absolute equality in population between districts. *Karcher*, 462 U.S. at 734 ("[T]here are no *de minimis* variations, which could practically be avoided, but which nonetheless meet the standard of Art. I, § 2 without justification.") "Article I, § 2, ... permits only the limited population variations which are unavoidable despite a good faith effort to achieve absolute equality, or for which justification is shown." *Id.* at 730. Contrary to Defendants' contention, the only variations which are per se excusable are those which are unavoidable. For example, Pennsylvania's population of 12,281,054 does not divide equally between its allotted nineteen districts. Therefore, if all of the districts under Act 1 had populations of 646,371 or 646,372, then the court could conclude that the differences in population were unavoidable and would not have to examine whether Act 1 was enacted in good faith.

However, according to Plaintiffs' allegations, this is simply not the case. District 7, the most populated district, has a population of 646,380, and Districts 1, 2, and 17, the least populated districts, have populations of 646,361; a maximum difference in population of nineteen. These variances, therefore, are not per se unavoidable. *See e.g. Anne Arundel County Republican Cent. Comm. v. State Admin. Bd. of Election Laws*, 781 F. Supp. 394, 395-96 (D. Md. 1991) (holding that a maximum deviation of ten between the most populated and the least populated districts does not satisfy Karcher's requirement of absolute equality). Plaintiffs also allege that Act 1's variances are not the result of a good-faith effort to achieve population parity, but rather

are part of a Republican plan to eliminate Democratic representatives from Congress. Additionally, Plaintiffs make several factual allegations that, if proven, would tend to undermine any justification Defendants might proffer in support of Act 1's population variances.

Defendants cite *Karcher* for the proposition that Plaintiffs must allege that a plan with smaller deviations was possible. The court finds that argument unpersuasive. In *Karcher*, the plaintiffs provided the court with an alternative plan as evidence that the challenged plan was not the result of a good-faith effort to achieve district population parity. 462 U.S. at 726. That case, however, had proceeded beyond the Rule 12(b)(6) stage. While Plaintiffs may have to provide such a plan in order to satisfy their ultimate burden of persuasion in this case, there is nothing in the *Karcher* decision indicating that such a plan must be alleged in the complaint. Plaintiffs, therefore, have pleaded a prima facie violation of the one person-one vote command of Article I, § 2. Accordingly, the court will deny Defendants' motion to dismiss Count I of Plaintiffs' amended complaint.

3. Equal Protection (Partisan Gerrymandering)

In *Davis v. Bandemer*, the Supreme Court first recognized that claims for violation of equal protection based on partisan gerry mandering present justiciable issues. 478 U.S. at 123-26. Although that holding commanded a majority, only a plurality of the court endorsed the standards setting out what constitutes such a violation. Where a fragmented Court decides a case and no single rationale earns the endorsement of five Justices, "the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." *Gregg v. Georgia*, 428 U.S. 153, 169 n.15 (1976). Therefore, we may correctly view the plurality's analysis in

Bandemer as constituting the governing standards to be applied in this case. *Accord Pope v. Blue*, 809 F. Supp. 392, 395 (W.D.N.C. 1992); *Republican Party v. Wilder*, 774 F. Supp. 400, 403-04 (W.D. Va. 1991); *Badham v. Fong Eu*, 694 F. Supp. 664, 668 (N.D. Cal. 1988).

In *Bandemer*, a plurality of the Court held that a plaintiff, in order to succeed on an equal protection claim of partisan gerrymandering, must "prove both intentional discrimination against an identifiable political group and an actual discriminatory effect on that group." 478 U.S. at 127. With this standard in mind, we now examine Plaintiffs' amended complaint in order to determine whether they have alleged facts that, if proven, would constitute an equal protection violation.

a. Identifiable Political Group

Defendants initially argue that Plaintiffs have failed to allege facts that could establish that they are members of an identifiable political group. Specifically, Defendants contend that Plaintiffs have failed to allege facts demonstrating that Democrats in Pennsylvania vote as a block. However, Defendants do not point to any authority which would require such an allegation. The court has scoured the *Bandemer* decision and has found no such requirement. Instead, the court finds that *Bandemer* indicates that Plaintiffs must allege only that they are members of an identifiable political group whose geographical distribution is sufficiently ascertainable that it could have been used in drawing electoral district lines. Clearly, by alleging that they are Pennsylvanian citizens who vote for Democrats, Plaintiffs have satisfied this requirement.

b. Discriminatory Intent

Both parties appear to recognize that the intent requirement in this case has been met. As the *Bandemer* plurality pointed out, "as long as redistricting is done by a legislature, it should not be very difficult to prove that the likely political consequences of the reapportionment were intended." *Id.* at 128. In this case, Plaintiffs allegations – that the Republican majority in the Pennsylvania General Assembly prevented all Democratic input on Act 1 in order to establish a Republican super-majority in Pennsylvania's congressional caucus – are sufficient to satisfy their pleading requirement.

c. Actual Discriminatory Effects

The analysis as to the actual discriminatory effect is not nearly as simple. It appears that the effects analysis itself involves another two-pronged determination. First, Plaintiffs must prove an actual or projected history of disproportionate election results. Second, Plaintiffs must prove that "the electoral system is arranged in a manner that will consistently degrade a voter's, or group of voters', influence on the political process as a whole." *Id.* at 110. While Plaintiffs' allegations may be sufficient to satisfy the first requirement as a projection of disproportionate election results, they do not indicate that Plaintiffs have been, or will be, prevented from participating in the political process. Even assuming *arguendo* that Plaintiffs' allegations are true, the court will dismiss Plaintiffs' equal protection claim because Plaintiffs have not alleged facts indicating that as a result of Act 1 Plaintiffs will be completely shut out of the political process.

We begin our analysis by stating that the recondite standard enunciated in *Bandemer* offers little concrete

guidance. However, the result may assist us. In that case, Republicans enjoyed majorities in both houses of the state legislature, and the Governor was a Republican. Exploiting these majorities, the Republicans adopted a state legislature redistricting plan that heavily favored Republicans. The plaintiffs in *Bandemer* filed suit challenging the plan as a violation of equal protection. At trial before a three-judge panel, the plaintiffs presented the following evidence: (1) of the statewide votes cast in the elections for the State House of Representatives, Democratic candidates received 51.9% of the vote, but won only forty-three of the 100 seats available; (2) of the statewide votes cast in the elections for the State Senate, Democratic candidates received 53.1% of the vote, but won only thirteen of the twenty-five seats available; (3) in two counties where 46.6% of the voting population tended to vote Democrat on a regular basis, Republicans won 85% of the seats available – eighteen out of twenty-one; (4) the plan disregarded political subdivision boundaries defining communities of interest; and (5) the plan disregarded the one person-one vote imperative and the Voting Rights Act's no retrogression requirement. 478 U.S. at 116, 134. On this evidence, the panel held that the plan violated equal protection as a partisan gerrymandering.

A plurality of the Supreme Court, however, overturned that result. In doing so, the Court held that the evidence failed to establish that the redistricting plan had a sufficiently adverse impact on the Indiana Democrats to constitute a violation of the Equal Protection Clause. *Id.* at 129. Specifically, the Court stated that "the mere lack of proportional representation will not be sufficient to prove unconstitutional discrimination. Again, without specific supporting evidence, a court cannot presume in such a case that those who are elected will disregard the disproportionately underrepresented group." *Id.* at 130.

According to the Court, the plaintiffs failed to provide any such evidence and, therefore, failed to establish an equal protection violation.

The three-judge panel in *Badham v. Fong Eu*[12] applied the *Bandemer* standard and concluded that the plaintiffs there had not satisfied their burden of alleging that California's congressional redistricting plan resulted in Republicans being shut out of the political process as a whole. 694 F. Supp. at 670-71. In that case, an outgoing Democratic Governor colluded with the Democratic majority in the state legislature to pass a congressional redistricting plan that heavily favored Democratic candidates. In the first election held under that plan, Republicans received 50.1% of the vote statewide, but received only 40% of the congressional seats (eighteen of forty-five). The defendants filed a Rule 12(b)(6) motion to dismiss. The panel granted the motion holding that the plaintiffs had failed to allege facts that, if proven, would demonstrate an actual discriminatory effect on Californian Republicans. The *Badham* panel focused its analysis on the effects the plan would have on California's political landscape as a whole.

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[12] Although the Supreme Court did not grant *certiorari* to hear the *Badham* case, it did summarily affirm the three-judge panel's decision. *See Badham v. Eu*, 488 U.S. 1024 (1989). Unlike a denial of *certiorari*, a summary affirmation by the Supreme Court creates precedential authority binding on the lower courts. *See* 12 Moore's Federal Practice ¶ 400.05-1 (3d ed. 1999). This authority extends only to the judgment's result, and not the underlying reasoning. *Mandel v. Bradley*, 432 U.S. 173, 176 (1977). "Nevertheless, due in particular to the fact that the *Bandemer* Court was unable to agree on a majority opinion, we believe that the *Badham* court's interpretation of *Bandemer*, subsequently affirmed by the Supreme Court, is entitled to substantial deference." *Pope v. Blue*, 809 F. Supp. at 395 n.2.

It is on this second prong of the "effects" threshold that plaintiffs' complaint falters. Specifically, there are no factual allegations regarding California Republicans' role in the political process as a whole. ... There are no allegations that California Republicans have been "shut out" of the political process, nor are there allegations that anyone has ever interfered with Republican registration, organizing, voting, fund-raising, or campaigning. Republicans remain free to speak out on issues of public concern; plaintiffs do not allege that there are, or have been, any impediments to their full participation in the uninhibited, robust, and wide-open public debate on which our political system relies....

Particularly conspicuous by its absence is any allegation that plaintiffs' interests are being entirely ignored by their congressional representatives. ... Instead, plaintiffs claim that Democratic incumbents will be reelected without need to attend to the views of fragmented and submerged Republican minorities in their districts. . . Nowhere do plaintiffs suggest that they can prove disregard by any means other than by inference from the election results, a method which *Bandemer* removes from our purview.

Badham, 694 F. Supp. at 670-71 (internal quotations omitted).

In this case, Plaintiffs' allegations amount to this; Act 1 is rigged to guarantee that thirteen of Pennsylvania's nineteen congressional representatives will be Republicans. As a result, Democrats will have a more difficult time electing their candidates. Due to this impediment, "the Democratic Party will have greater difficulty in fielding competitive candidates." (Amd. Compl. at ¶ 35.) Thus, Act 1

operates "to essentially shut Democrats and Democratic voters out of the political process." (*Id.* at ¶ 36.) Plaintiffs, in particular, "will suffer harm ... [because they] will now be increasingly represented by members of Congress who do not represent their views." (*Id.* at 37.)

As *Bandemer* and *Badham* dictate, these allegations are insufficient to make out a cause of action for violation of equal protection. First, Plaintiffs' allegation that Republicans will earn a super-majority of the congressional representatives despite their status as a minority party statewide is simply an argument for proportional representation. However, *Bandemer* soundly rejected such a basis for an equal protection violation. *See* 478 U.S. at 130 ("Our cases, however, clearly foreclose any claim that the Constitution requires proportional representation or that legislatures in reapportioning must draw district lines to come as near as possible to allocating seats to the contending parties in proportion to what their anticipated statewide vote will be.")

Second, *Bandemer* was equally forceful in rejecting the presumption that voters who vote for losing candidates will not be adequately represented. *See id.* at 132 ("An individual or a group of individuals who votes for a losing candidate is usually deemed to be adequately represented by the winning candidate and has as much opportunity to influence that candidate as other voters in the district."). Therefore, Plaintiffs' allegation that they will be represented in Congress by Republicans who do not share their views bears no weight in our analysis.

Third, Plaintiffs' allegations that, due to Act 1, the Democratic party will have a greater difficulty in fielding competitive candidates is irrelevant. The focus in our inquiry is on the effect that the redistricting plan will have on an

identifiable political group. In this case, as previously stated, that group is Pennsylvania Democratic *voters*. Therefore, the focus is on the effect Act 1 will have on the voters' ability to participate in the political process, not the Democratic party's health in Pennsylvania. The Constitution protects against partisan gerrymandering only because of the effect that it has on the individual's ability to exercise the fundamental right to vote. It goes without saying that political parties, although the principal players in the political process, do not have the right to vote. Therefore, their health is a non-issue in the constitutional analysis. Stripped to its bones, Plaintiffs' allegations, in this respect, amount to a claim that Act 1 will make it more difficult for them to elect Democratic candidates to Congress. However, this simply is not the end-all be-all constitutional analysis that Plaintiffs make it out to be.

> [T]he mere fact that a particular apportionment scheme makes it more difficult for a particular group in a particular district to elect representatives of its choice does not render that scheme constitutionally infirm. This conviction, in turn, stems from a perception that the power to influence the political process is not limited to winning elections. . . . Thus, a group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme makes winning elections more difficult, and a failure of proportional representation alone does not constitute impermissible discrimination under the Equal Protection Clause.

Id. at 131-32.

Finally, we find that Plaintiffs' allegations do not indicate that Act 1 "essentially shuts ... Democratic voters out of the political process." (Amend. Compl. at ¶ 36.) While

Plaintiffs employ this phrase in their complaint, these words do not have the talismanic effect of converting Act 1 into an actionable constitutional violation. *See Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) (holding that when deciding a Rule 12(b)(6) motion to dismiss, the court must treat a plaintiff's allegations as true, but need not give such credence to legal conclusions). While Plaintiffs allege that Democratic members of the Pennsylvania General Assembly were shut out of the redistricting process, there are no allegations that anyone has ever prevented, or will ever prevent, Plaintiffs from: registering to vote; organizing with other like-minded voters; raising funds on behalf of candidates; voting; campaigning; or speaking out on matters of public concern. *See Badham*, 694 F. Supp. at 670. Act 1 simply does not address such issues. In short, "Plaintiffs do not allege that there are, or ever have been, any impediments to their full participation in the 'uninhibited, robust, wide-open' public debate on which our political system relies." *Id.* (quoting *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964)).

In summation, Plaintiffs have not alleged facts indicating that they have been shut out of the political process and, therefore, they cannot establish an actual discriminatory effect on them. Because the court holds that Plaintiffs' allegations are insufficient to pass the threshold effects analysis, the court will dismiss that portion of the complaint alleging that Act 1 violates the Equal Protection Clause.

4. Privileges and Immunities

In Count III of the amended complaint, Plaintiffs assert that Act 1 violates their rights pursuant to the Privileges and

Immunities Clause of the Fourteenth Amendment.[13] However, the Third Circuit has recognized that "the Privileges and Immunities Clause of the Fourteenth Amendment has 'remained essentially moribund' since the Supreme Court's decision in *The Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1872), and the Supreme Court has subsequently relied almost exclusively on the Due Process Clause as the source of unenumerated rights." *In re Sacred Heart Hosp.*, 133 F.3d 237, 244 (3d Cir. 1997).

Plaintiffs, though, argue that Act 1 "grants Republicans their right to be free of a district that does not impermissibly burden their rights to an undiluted vote, but it denies that right to Democrats." (Pls. Br. in Opp. Mot. to Dis. at 20.) Therefore, according to Plaintiffs, there must be some legitimate governmental purpose for Defendants' actions. In support for this contention, Plaintiffs rely entirely upon *Saenz v. Roe*, 526 U.S. 489 (1999). In *Saenz*, the Court held unconstitutional a California statute that limited the welfare benefits of new residents during their first year of residency in that state. The statute, the Court reasoned, violated the fundamental right of citizens to travel from state to state. In making this determination, the Court held that the statute violated the third element of the right to travel -- the right of the newly-arrived citizen to enjoy the same privileges and immunities "enjoyed by other citizens of the same State." *Id.* at 502.

Plaintiffs, however, do not explain how the right to travel, which apparently is protected in some part by the Privileges and Immunities Clause, translates into a right to

[13] In relevant part, the Fourteenth Amendment reads: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . . ." U.S. Const. amend. XIV, § 1.

have proportional representation with Republican voters. Simply put, the Privileges and Immunities Clause, which protects against discrimination on the basis of state citizenship, has nothing to do with this case. In this case, there are no allegations that Plaintiffs are newly-arrived citizens of Pennsylvania or that they are citizens of other states. In fact, the amended complaint clearly states that both Plaintiffs and Defendants are citizens of Pennsylvania. (*See* Amd. Compl. at ¶¶ 2-5.) Because Plaintiffs have failed to allege a cause of action for violation of the Privileges and Immunities Clause, the court will dismiss Count III of the amended complaint.

5. First Amendment

In Count IV of the amended complaint, Plaintiffs assert that Act 1 violates their right to free association as guaranteed to them by the First Amendment. The gravamen of Plaintiffs' claim is that Act 1 constitutes a governmental classification based on political affiliation and, thus, violates their right to free association.

It is well established that the "First Amendment protects political association as well as political expression." *Buckley v. Valeo*, 424 U.S. 1, 15 (1976). However, Plaintiffs fail to explain how Act 1 penalizes them for their exercise of First Amendment rights. Instead, Plaintiffs try to analogize their claim to a ballot access denial or a denial of the right to vote. However, nowhere in Plaintiffs' amended complaint do they allege that Act 1 prevents them from voting or having access to the ballot. Instead, Plaintiffs imply that Act 1 makes it more difficult for them to exercise these rights.

It is true that the First Amendment guarantees participation in the political process. However, as the legion of case law and common sense dictate, it does not guarantee that such participation will be successful. *Accord Republican*

Party v Martin, 980 F.2d 943, 960 (4th Cir. 1992); *Pope v. Blue*, 809 F. Supp. at 398; *Badham*, 694 F. Supp. at 675. "Because there is 'no device that directly inhibits participation in the political process,' [Plaintiffs'] freedom of association claim boils down to the argument that they are entitled to political success." *Pope*, 809 F. Supp. at 398. This is a right which the Constitution does not guarantee. Therefore, we hold that the Plaintiffs' freedom of association claim is coextensive with their equal protection claim. *Accord Id.* As discussed above, *see supra*. Part II.B.3, Plaintiffs have not stated a claim for a recognized violation of the Fourteenth Amendment. Therefore, the court will dismiss Plaintiffs' claim in Count IV for failure to state a claim for violation of their First Amendment right to free association.

6. 42 U.S.C. § 1983

In Count V, Plaintiffs assert a claim based on violation of 42 U.S.C. § 1983. However, as previously stated, *see supra*. at 536, n.6, "§ 1983 does not create substantive rights but 'merely redresses the deprivation of ... rights. . . created by the Constitution or federal statute.'" *Ridgewood Bd. of Educ. v. N.E. for M.E.*, 178 F.3d 238, 251-52 (3d. Cir. 1999) (quoting *W.B. v. Matula*, 67 F.3d 484, 493 (3d Cir. 1995)). Accordingly, the court has construed Plaintiffs' amended complaint as an action brought pursuant to § 1983 to vindicate their rights under the Constitution. Therefore, to the extent that Plaintiffs seek an independent basis for recovery, Count V will be dismissed.

7. Relief Sought

Finally, Defendants contend that the remainder of Plaintiffs' complaint must be dismissed because the court cannot grant the type of relief which Plaintiffs request. Specifically, Defendants rely upon *Growe v. Emison*, 507

U.S. 25, 34 (1993), for the proposition that the court is without power to create a new redistricting plan. That is, even if the court determines that Act 1 is unconstitutional, we must defer to the State legislature or judicial system to create a new plan. However, the court need not address that issue at this time. Plaintiffs request that the court grant a declaratory judgment that Act 1 violates the one person-one vote requirement of Article I. Clearly, the court has the remedial power to issue such a declaratory judgment.

III. Conclusion

As to Defendant Executive Officers' motion to dismiss for lack of subject matter jurisdiction, the court will grant that motion in part and will deny it in part. The court will grant the motion as to Defendant Commonwealth of Pennsylvania, which will be dismissed from the suit on the basis of Eleventh Amendment sovereign immunity. The court, however, will deny the motion in all other respects. Because the court finds that Plaintiffs have standing to sue, the court will deny Defendant Presiding Officers' motion to dismiss for lack of subject matter jurisdiction. Additionally, as to the motions to dismiss for failure to state a claim, the court will grant both motions in part and deny both motions in part. The court holds that Plaintiffs have alleged a valid cause of action for violation of the one person-one vote requirement of Article I. Accordingly, the motions will be denied as to Count I of the amended complaint. However, the court will grant the motion as to Counts II, III, IV and V. An appropriate order will issue.

Dated: February 22, 2002.

ORDER

In accordance with the accompanying memorandum of law, **IT IS HEREBY ORDERED THAT**:

(1) Defendant Executive Officers' motion to dismiss pursuant to Rule 12(b)(1) is **GRANTED IN PART** and **DENIED IN PART**, as follows:

(A) As to Defendant Commonwealth of Pennsylvania, the motion is **GRANTED**, all claims against the Commonwealth are dismissed;

(B) In all other respects, the motion is **DENIED**;

(2) Defendant Presiding Officers' motion to dismiss pursuant to Rule 12(b)(1) is **DENIED**;

(3) Defendant Executive Officers' motion to dismiss pursuant to Rule 12(b)(6) is **GRANTED IN PART** and **DENIED IN PART**, as follows:

(A) The motion is **GRANTED** as to Counts II, III, IV and V of the amended complaint;

(B) The motion is **DENIED** as to Count I of the amended complaint;

(4) Defendant Presiding Officers' motion to dismiss pursuant to Rule 12(b)(6) is **GRANTED IN PART** and **DENIED IN PART**, as follows:

(A) The motion is **GRANTED** as to Counts II, III, IV and V of the amended complaint;

(B) The motion is **DENIED** as to Count I of the amended complaint.

/s/ Richard L. Nygaard
United States Circuit Judge

/s/ William H. Yohn, Jr.
United States District Judge

/s/ Sylvia H. Rambo
United States District Judge

Dated: February 22, 2002

Appendix C

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, NORMA JEAN VIETH, and SUSAN FUREY, Plaintiffs v. COMMONWEALTH OF PENNSYLVANIA, *et al.*, Defendants

CIVIL NO. 1:CV-01-2439

April 8, 2002, Decided

April 8, 2002, Filed

OPINION AND ORDER OF THE COURT

PER CURIAM

In our previous order of February 22, 2002, we dismissed several claims brought by the Plaintiffs which challenged the constitutionality of Pennsylvania Senate Bill 1200 (Act 1), the congressional redistricting plan enacted by the General Assembly and signed into law on January 7, 2002. On March 11-12, 2002, we held a hearing on the Plaintiff's sole remaining claim: Act 1 violates the constitutional principle of "one-person, one vote." Upon conclusion of this hearing, we ordered the parties to file proposed findings of fact and conclusions of law.

I. Background

The 2000 Census reported that Pennsylvania's total population was 12,291,054 persons. As a result of this population figure, and in accordance with Article I, Section 2 and the Fourteenth Amendment to the United States

Constitution, Pennsylvania's congressional delegation was reduced from twenty-one to nineteen representatives in Congress.[1]

The loss of two congressional seats made it necessary to increase the size of the existing districts by approximately 100,000 persons. Additionally, because of shifts in population, some congressional districts were over-populated while some were well under the ideal population. Therefore, significant changes were made to the existing congressional districts.

Pennsylvania Senate Bill 1200 was introduced by Senators Brightbill and Lemmond on November 16, 2001. Senators Brightbill and Lemmond are members of the Republican Party. A competing plan, Senate Bill 1241 was introduced by Democratic state senators Mellow, O'Pake, Wagner, Musto, Kasunic, Fumo and Stout. On December 10, 2001, the Senate considered amendments to Senate Bill 1200. A Republican amendment was ultimately agreed to. The version of Senate Bill 1200 that eventually passed the Senate contained a population deviation of twenty-four persons.

After an amendment by the Pennsylvania House of Representatives, that chamber passed Senate Bill 1200 on December 12, 2001. The version of Senate Bill 1200 that passed the House had a total population deviation of nineteen

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[1] Article I, Section 2 states in pertinent part: "The House of Representatives shall be composed of Members chosen every second year by the People of the several States, and the Electors of each State shall have Qualification requisite for Electors of the most numerous Branch of the State Legislature." U.S. Const. art I, § 2. Section 2 of the Fourteenth Amendment states in pertinent part: "Representatives shall be apportioned among the several states according to their representative numbers, counting the whole number of persons in each state." U.S. Const. amend. XIV, § 2.

persons.[2] It also maintained two minority-majority districts in the Philadelphia area, created one open seat in the southeastern part of the Commonwealth and paired two Democratic incumbents in the same district. One Democratic incumbent was paired against one Republican incumbent.

The Senate refused to concur in the amendments to Senate Bill 1200 offered by the House of Representatives. A Conference Committee was appointed and a plan was eventually devised that contained a nineteen person deviation. This Conference Committee Report on Senate Bill 1200 was passed by the Senate on January 3, 2002 and by the House of Representatives later the same day. It was signed into law on January 7, 2002.

In its final form, Act 1 created nineteen congressional districts with a total population deviation of nineteen. Although Act 1 did maintain two "minority-majority" districts in Philadelphia, it created three districts in which six incumbent congressman would have to run for re-election against each other. Of these pairings, two of the districts required Democratic congressmen to run against each other and one district required an incumbent Democratic representative to run against an incumbent Republican representative. These pairings of incumbent congressman permitted the creation of an open congressional district in the southeastern part of the Commonwealth. In contrast to its treatment of Democratic incumbents, no Republican congressmen are forced to run against each other.

Moreover, Act 1 splits eighty-four local governments, including twenty-five counties, fifty-nine cities, boroughs or

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[2] The term "deviation" as used in this opinion refers to the differences in population between the least and most populated districts under the redistricting plan.

townships, as well as forty-one wards. It also splits six voting precincts.

II. Analysis

A. Population Deviation

The United States Constitution requires that each congressional district in a state contain equal population. *See Wesberry v. Sanders*, 376 U.S. 1, 18 (1864) (holding that Art. I, § 2 of the Constitution requires that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."). The Supreme Court has been exceedingly clear in requiring lower courts to balance population among the districts with precision. *See Karcher v. Daggett*, 462 U.S. 725, 734 (1983) ("there are no *de minimis* population variations, which could practicably be avoided, but which nonetheless meet the standard of Art. I, § 2 without justification."); *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969) ("The 'as nearly as practicable' standard requires that the State make a good-faith effort to achieve precise mathematical equality. Unless population variances among congressional districts are shown to have resulted despite such effort, the State must justify each variance, no matter how small."). In a challenge to a congressional redistricting plan, the plaintiff bears the burden of proving that the differences in district-to-district population could have been reduced or eliminated altogether by a "good-faith effort to draw districts of equal population." *Karcher*, 462 U.S. at 730.

We find that the Plaintiffs have met their burden in this case. First, it is undisputed that Act 1 has a deviation in population of nineteen persons between the most populated and least populated districts. Therefore, unless these deviations were unavoidable or resulted despite a good faith effort to draw districts of equal population, then the

Defendants must prove a legitimate justification for the deviations. The evidence conclusively demonstrates that this population deviation was avoidable. Plaintiffs presented into evidence "Alternative Plan 4" which had a minimum possible deviation – districts that differ by only one person. Additionally, this plan achieves zero deviation without splitting any precincts among congressional districts and splits fewer municipalities than Act 1. Witnesses presented by both parties testified that it would have been relatively easy to take any plan or map and reach a point of zero population deviation.[3] Indeed, the Defendants themselves

[3] The Defendants suggest that "Alternative Plan 4" cannot be considered because it was never before the legislature. They argue that Plaintiffs must meet their burden under the first prong of the *Karcher* test only by relying on maps and/or redistricting plans that have a lower population deviation than the one enacted and that were presented to the legislature. We disagree. Although in *Karcher*, the legislature had before it other plans with less deviation, the Court never endorsed such a requirement. Instead, the Court focused on whether a plan with less deviation was possible. In this case, the Plaintiffs have provided four plans that had less deviations than Act 1. If we were to adopt the limited analysis suggested by the Defendants, we would be adopting a view that would isolate grossly disproportionate plans from constitutional scrutiny on the sole basis that such plans constitute the plan with the least deviations *available*. *Karcher* is wrought with references indicating that the least deviation *possible* is that which should govern the analysis. *See* 462 U.S. at 727 (affirming the three-judge panel's conclusion that the New Jersey plan violated the one-person, one-vote requirement "because the population deviations among districts, although small, were not the result of good-faith effort to achieve *population equality*) (emphasis added); 462 U.S. at 732-33 (stating that the Court requires that "*absolute population equality* be the paramount objective of apportionment ... in the case of congressional districts," but not necessarily for other forms of redistricting) (emphasis added); 462 U.S. at 730 (stating that under the first prong of the analysis "the court must consider whether the population differences among districts could have been reduced or eliminated altogether by a good-faith effort to draw districts of *equal*

submitted a map with zero population deviation. Thus, the nineteen person deviation in Act 1 was avoidable.

Nor can the deviation contained in Act 1 be excused based upon the good faith of the Defendants. Indeed, we find that the testimony of defense witness Dr. John Memmi satisfies the Plaintiff's burden here. Dr. Memmi testified that he was in charge of drawing up the map that became Act 1. He further stated that he drew the map under the direct supervision of the Republican leadership. He began manipulating the map in order to get the deviations lower. However, once he reached the point of a nineteen-person deviation, he was told to stop manipulating the map:

> Q: Actually, what I would like to know is if there was a number that anybody said you could stop once you got to number nineteen or number 18?
>
> A: Every move that was made was done under the supervision of my supervisors. And at the time, the team involved the House Republican Caucus Redistricting crew, some members thereof, the Senate Republican Caucus Redistricting team, members thereof. And the Supervisors sat there while Bill Shower and I – Bill is a gentleman with the House Republican Caucus. They observed every census block move that we made. And we continued to make moves, and were monitoring the overall range. I should say we all monitored it, of

population") (emphasis added); 462 U.S. at 731 ("Adopting any standard other than *population equality*, using the best census data available ... would subtly erode the Constitution's ideal of *equal representation*.") (emphasis added). In this case, the evidence indicates that a zero-deviation map was possible, and thus should govern our analysis under *Karcher's* first prong.

> course, but the supervisor's the one whose monitoring counted. And when the districts were at nineteen overall range, they said that is sufficient.

Tr. Vol 3 at page 276. No other witnesses were called by the Defendants to explain why Dr. Memmi was told to stop manipulating the map.

We find this testimony to be in clear violation of the Supreme Court's express goal of getting as close as possible to zero deviation when drawing congressional districts. *See Karcher*, 462 U.S. at 734. Therefore, we find that the Defendants did not put forth a good-faith effort to draw districts of equal population.

It has been suggested that the deviation from absolute numerical equality present in Act 1 is too trivial or minute to rise to a constitutionally significant level. While it is true that the deviation contained in Act 1 is small, *Karcher* specifically holds that "there are no *de minimis* variations which could practically be avoided, but nonetheless meet the standard of Art. I, § 2 without justification." 462 U.S. at 734. Thus, we hold that the population deviation in Act 1, even though relatively small, enables the Plaintiffs to satisfy *Karcher's* first prong and shifts to the Defendants the burden of proving justification.

B. Justification

Because the Plaintiffs have met their burden under *Karcher*, the Defendants must now prove that this population deviation was "necessary to achieve some legitimate goal." 462 U.S. at 731 (*citing Kirkpatrick*, 394 U.S. at 530; *Swann v. Adams*, 385 U.S. 440, 443-444 (1967)). While *Karcher* did not specify how the State might meet its burden in step two, it did give several examples of legislative policies that might justify some variance among the populations of the State's

various congressional districts. Specifically, the Court stated that "making districts compact, respecting municipal boundaries, preserving the cores of prior districts and avoiding contests between incumbent Representatives" may legitimate minor population deviations among congressional districts. The Court also made clear that the burden borne by the State varies inversely with the magnitude of the population deviation. 462 U.S. at 741. That is, the greater the deviation, the more compelling the government's justification must be.

Defendants contend that the population variances in Act 1 are justified by a desire to avoid splitting voting precincts.[4] Both parties agree that splitting precincts creates additional costs and work for county election officials in acquiring voting machines, in customizing ballots, in training precincts officials, in registering voters and in counting ballots. Moreover, we recognize that split precincts increase the potential for voter disorientation and candidate confusion. Therefore, to the extent that such justification is genuine, we acknowledge that the desire to avoid splitting precincts is a legitimate state interest which could justify a nineteen person deviation.

We find, however, that the Defendants' arguments on this point are a mere pretext. Specifically, the evidence has demonstrated that it is possible to draw a congressional district map with zero deviation and no precinct splits. Plaintiffs' witness, Robert Priest, drew exactly such a map using the same tools as Dr. Memmi. However, unlike Dr.

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[4] While the Defendants have suggested various other state interests which may have justified Act 1, since the focus of our inquiry in the justification phase is population deviation, the only justification submitted which deals with that issue is the policy objective of limiting voter precinct splits. Therefore, we will confine our analysis to this issue.

Memmi, Mr. Priest was free to draw the map by manipulating entire precincts from district-to-district in order to achieve absolute population equality. As we have previously pointed out, Dr. Memmi testified that he was more constrained by his superiors. According to that testimony, Dr. Memmi initially formulated three congressional districts of ideal population by manipulating entire precincts. However, at that point, he was instructed to stop using whole precincts and to begin using census blocks to lower the deviation. Because every voting precinct contains several census blocks, manipulation of the census blocks leads almost inextricably to splitting precincts. We also note that none of the congressional districts that have split precincts have an ideal population.

Dr. Memmi was equally restrained in his efforts to bring Act 1 down to a zero deviation. That is, his superiors in the Republican caucus instructed him that he was only to manipulate census blocks and not precincts. This wholesale reliance on the census block method – the lone cause of the precinct splits – is what Defendants now employ to justify the deviations in their map. The logical inconsistency is so deep that it causes us to pause and consider the sincerity of such proffer. If Defendants truly wanted to avoid splitting precincts, they would have done so by enacting a zero deviation map that did not split *any* precincts.

Moreover, it is worth noting that of the maps presented at trial, Act 1 is that which least comports with the neutral legislative policies that the *Karcher* Court stated would justify a Congressional redistricting plan with some deviations. Act 1 is the plan which contains the least compact districts. (Pls. Ex. 12 at 7.) Act 1 splits the most counties (twenty-five) and municipalities (fifty-nine cities,

townships, or boroughs).[5] (*Id.*) With the exception of Act 1's twin, the zero-deviation version, Act 1 even splits the most precincts. (*Id.*) To the extent that Act 1 retains the cores of prior districts, it does so only for districts containing Republican incumbents. (*See id.* at 8.)

However, it is on Karcher's final endorsed neutral criteria – the avoidance of contests between incumbents – that Act 1 fails most miserably. Although Pennsylvania's loss of two congressional seats requires the pairing of only two sets of incumbents in the 2002 elections, Act 1 pits six incumbents against each other: two pairs of Democrats, and one Republican against one Democrat (the latter in a district that heavily favors Republican candidates). At the same time Act 1 pits more incumbents than necessary against one another, it also creates a new district, District 6, in which no incumbent resides. In the face of such evidence, it is clear that Karcher's neutral criteria were not high on the priority list in enacting Act 1.

The dissent suggests that our analysis should pay deference to the policies that Act 1 reflects. However, there is no legal authority to support the corollary assertion that the only relevant zero-deviation maps with no precinct splits are those which comport with the general contours of Act 1.

In summation, it has been conclusively proven that it is possible to draw a congressional district map with zero population deviation amongst districts without splitting any precincts. Therefore, Defendants cannot rely on a general desire to avoid splitting precincts as a legitimate justification for a map that splits six such precincts. Put another way, if it

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[5] In comparison, the now defunct 1992 Plan, which contained twenty-one congressional districts, split only eighteen counties and thirteen municipalities.

is possible to achieve a zero deviation map with no precinct splits by manipulating whole precincts, the actions of the Defendants in switching to census block data call into question the legitimacy of their proffered justifications. We find, therefore, that the Defendants have failed to provide any legitimate justification for the population deviations contained in Act 1. As such, we enjoin the implementation of Act 1.

III. Remedy

Having determined that Act 1 is unconstitutional, we now address the question of the appropriate remedy. The Supreme Court has cautioned that "reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." *White v. Weiser*, 412 U.S. 783 (1973). We recognize that the Pennsylvania General Assembly has primary jurisdiction over congressional redistricting. Furthermore, no evidence was presented that would permit us to conclude that the General Assembly would be unable to enact a new constitutional redistricting plan in time for the 2002 elections. This is not a case where the respective legislative bodies are hopelessly deadlocked and the likelihood is that they will be able to enact a constitutionally sound plan.

Therefore, the Defendants are ordered to submit a constitutionally sound redistricting plan that has been enacted into law by the Commonwealth of Pennsylvania to this court within three weeks of the date of this opinion.

An appropriate order will follow.

ORDER

In accordance with the preceding opinion, **IT IS HEREBY ORDERED THAT**:

(1) Plaintiffs' request for declaratory judgment is **GRANTED**. Act 1 is hereby declared unconstitutional as a violation of Article I, § 2 of the United States Constitution;

(2) Plaintiffs' request for injunctive relief is **GRANTED IN PART** as follows:

(A) To the extent that Plaintiffs request that the court enjoin Act 1's implementation, Plaintiffs' request is **GRANTED**. Defendants are permanently enjoined from implementing Act 1;

(B) To the extent that Plaintiffs request that the court devise its own redistricting plan for use in the 2002 congressional elections, Plaintiffs' request is **deferred pending compliance by the Pennsylvania General Assembly with this order**; and instead,

(3) The Pennsylvania General Assembly shall, within three weeks of the date of this order, prepare, enact and submit for review and final approval by this Court, a congressional redistricting plan in conformity with this opinion.

This Court shall retain jurisdiction pending issuance of a final order in this matter.

IT IS SO ORDERED.

/s/ Richard L. Nygaard
United States Circuit Judge

/s/ Sylvia H. Rambo
United States District Judge

Dated: April 8, 2002.

YOHN, DISTRICT JUDGE, DISSENTING:

I agree with majority that the plaintiffs have met the first prong of the *Karcher* test and that the appropriate remedy, if Act 1 is unconstitutional, is to give the Commonwealth of Pennsylvania a reasonable period of time to enact a constitutionally sound redistricting plan.

I respectfully dissent, however, from Section II.B. of the majority opinion and conclude that defendants have met their burden, although just barely, to establish a justification for the nineteen person maximum deviation, and that Act 1 therefore passes constitutional muster.

In *Karcher v. Daggett*, 462 U.S. 725 (1983), the Court stated that the plaintiffs' "success in proving that the Feldman Plan was not the product of a good faith effort to achieve population equality means only that the burden shifted to the state to prove that the population deviations in its plan were necessary to achieve some legitimate state objective." (emphasis added). 462 U.S. at 740. Thus, the focus of the second prong of the *Karcher* test is the state's justification for the population deviations in Act 1.[6]

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[6] The majority correctly points out that the Court has "made clear that the burden borne by the state varies inversely with the magnitude of the population deviation. . . . That is, the greater the deviation, the more compelling the government's justification must be." It would seem therefore that a nineteen person deviation in a congressional district of 646,371 or 646,372 would require a justification on the lowest end of the "justification" scale.

The defendants have pointed to a litany of state interests behind Act 1; however, since the focus of our inquiry in the justification phase of the *Karcher* analysis is the population deviation, the only justification submitted which deals with that issue is the policy objective of limiting voter precinct splits. Defendants contend that Act 1 could be "zeroed-out" by using Modification One but that this would entail splitting twenty-six voting precincts rather than the split of six voting precincts in Act 1.

Both parties agree that splitting precincts creates additional costs and work for county election officials in acquiring voting machines, in customizing ballots, in training precinct officials, in registering voters and in counting ballots. In addition, it increases the potential for voter confusion and candidate confusion. Thus, the desire to minimize the splitting of voting precincts is a legitimate justification, particularly when the overall population deviation is only nineteen.

The evidence with reference to this justification is, however, minimal. Dr. John Memmi testified that he was the cartographer who worked on the final draft of what became Act 1. When he reached the population deviation of nineteen he was told by his superiors that he could stop work. Inexplicably, neither party asked Dr. Memmi who told him this or called as a witness the person who told him to stop work in order to explore the basis for the decision. As a result, we are left to draw inferences from the evidence presented.

Defendants ask us to draw the inference that the effort to equalize population was halted because of a desire not to split any more voting precincts. There are 9,427 voting precincts in Pennsylvania but there are 322,424 census blocks. Act 1 as enacted contained six voting precinct splits.

(Defendants' exhibit 92). Subsequent to the enactment of Act 1 Dr. Memmi made further adjustments of census blocks in order to produce a plan with a zero population deviation. Using census blocks inevitably leads to more voter precinct splits and the resulting plan, designated as Modification One contains twenty-six voting precinct splits. (Defendants' exhibit 90).

This inference is also supported by the testimony of Dr. Memmi concerning the conversation when he was working on the last draft of what became Act 1 and told that he could stop work.

> Q Did they tell you why they thought that was sufficient?
>
> A They did not specifically say John, Bill, these are the reasons why we are stopping at 19. I don't mean to be curt.
>
> One of the prevailing themes throughout the exercise was to minimize the number of precinct incursions. We were at six. I worked with individuals who understand the election process. They understand the administration at the county level.
>
> I do not profess to have any more than at best a superficial understanding of that. But the concern was to minimize the number of precinct incursions so that election administration would be as smooth as it could be.

R. at 320 - 21.

Finally, I note that neither party has, even with the benefit of hindsight, submitted a plan following the general

contours of Act 1 which does not involve the splitting of more than six voting precincts. Thus, I find that the inference defendants suggest, that the justification for Act 1 is the reduced number of voting precinct splits, is reasonable.

Plaintiffs, on the other hand, ask us to infer that the Act 1 plan was not "zeroed out" because of partisan considerations. Plaintiffs produced a map that was "zeroed out" without splitting any voting precincts, Alternative Four. However, this plan does not follow the general contours of Act 1. The Court has oftentimes reminded us of the necessity not to override state goals, policies and preferences any more than is necessary. *See Abrams v. Johnson*, 521 U.S. 74, 101 (1997); *Upham v. Seamon*, 456 U.S. 37, 41-42 (1982); *White v. Weiser*, 412 U.S. 783, 795 (1973). There is no evidence to support a conclusion that Alternative Four encompasses the many other state goals, policies and preferences inherent in Act 1 which resulted in its enactment. In addition, plaintiffs have suggested no connection between the nineteen person deviation in Act 1 and the alleged partisanship of the plan. Indeed, any such suggestion is contradicted by Dr. Memmi's specific testimony that when he was trying to reduce the plan to the minimal population deviation possible on December 31, 2001, nobody expressed any concern that continuing to trade whole precincts might change the political characteristics of some of the districts and that during the entire procedure there was no commentary of a political nature. R. at 322. Moreover, to the extent that the plaintiffs are arguing partisan gerrymandering, the *Karcher* Court noted that "beyond requiring states to justify population deviations with explicit, precise reasons, which might be expected to have some inhibitory effect, *Kirkpatrick* does little to prevent what is known as gerrymandering. . . . *Kirkpatrick's* object, achieving population equality, is far less ambitious than what would be required to address

gerrymandering on a constitutional level." *Karcher*, 462 U.S. at 734 n.6. Thus, the inference which the plaintiffs ask us to draw is not supported by the evidence, by reason, or by law.

I conclude, therefore, that the nineteen person deviation was justified by the "legitimate state objective" of avoiding further splitting of voter precincts and that there has been no proof that the population deviation of nineteen persons bore any relationship to the alleged partisanship of Act 1. Thus, Act 1 is not unconstitutional.

/s/ William H. Yohn, Jr.
United States District Judge

Appendix D

IN THE SUPREME COURT OF PENNSYLVANIA

JOANN ERFER and JEFFREY B. ALBERT, Petitioners
v.
THE COMMONWEALTH OF PENNSYLVANIA; MARK S. SCHWEIKER, in his official capacity as Governor of Pennsylvania; KIM PIZZINGRILLI, in her official capacity as Secretary of the Commonwealth of Pennsylvania; RICHARD FILLING, in his official capacity as Commissioner of the Bureau of Commissions, Elections, and Legislation of the Pennsylvania Department of State; ROBERT C. JUBELIRER, in his official capacity as Lieutenant Governor of Pennsylvania and President of the Pennsylvania Senate; MATTHEW J. RYAN, in his official capacity as Speaker of the Pennsylvania House of Representatives, Respondents

14 MM 2002

March 15, 2002, Filed

OPINION

MR. JUSTICE CAPPY

This opinion is filed in support of the per curiam order of this court dated February 15, 2002. That order dismissed the state constitutional law claims raised in Joann Erfer and Jeffrey Albert's Petition for Review.

This matter concerns the General Assembly's plan redrawing federal congressional districts to comport with the results of the 2000 Census. See Act No. 2002-1 ("Act 1").

Joann Erfer and Jeffrey Albert ("Petitioners") filed a Petition for Review with the Commonwealth Court on January 10, 2002, raising federal and state constitutional law challenges to Act 1. In light of the fact that February 19, 2002 is the opening date and March 12, 2002 is the closing date for the circulation and filing of nomination petitions for the 2002 elections, Petitioners also requested that the Commonwealth Court expedite its consideration of this matter.

On January 22, 2002, the Commonwealth Court, however, scheduled to hear this matter on March 13, 2002, one day after the closing date for the circulation and filing of nomination petitions. On January 25, 2002, Petitioners filed an emergency Application with this court, requesting that we exercise plenary jurisdiction over this matter and set an expedited hearing schedule. Notably, they requested that only their Pennsylvania Constitutional law claims be resolved on an expedited basis. We granted plenary jurisdiction and remanded this matter with the directive that the Commonwealth Court's findings of fact and conclusions of law should be filed with this court by February 8, 2002.

The Honorable Dante Pellegrini of the Commonwealth Court promptly held hearings in this matter. While Petitioners raised several state constitutional law claims, they focused primarily on their claim that the legislature engaged in unconstitutional political gerrymandering in drawing up Act 1 in violation of the equal protection guarantee, Pa. Const. art. 1, §§ 1 and 26, and the free and equal elections clause, Pa. Const. art. 1, § 5. Petitioners acknowledged that based on voter registration figures, Act 1 grants rough parity to the two dominant political parties. See Pellegrini's Recommended Findings of Fact and Conclusions of Law, dated February 8, 2002, (hereinafter "Pellegrini Opinion") at 12-13 (discussing statistics related to voter registration in the

nineteen districts).[1] Thus, based solely on voter registration, there was no evidence of political gerrymandering. Yet, Petitioners did not contend that the evidence of gerrymandering could be found based upon the registration of the voters. Rather, they claimed that based upon the statistics of how voters actually cast their ballots in the past, the complexion of the districts was such that a Republican candidate would win in 13 or 14 of the 19 districts.

Judge Pellegrini agreed with Petitioners that roughly two-thirds of the districts would probably be won by Republicans, and that the legislature took the information it gleaned from analyzing voting trends and deliberately drew the congressional districts so as to grant an advantage to the Republican party. See Pellegrini Opinion at 16 and 27. Yet, Judge Pellegrini opined that Petitioners could not prevail on their gerrymandering claim, and were thus not entitled to relief, because Petitioners did not constitute an "identifiable political salient class". Pellegrini Opinion at 27.[2] The parties were then directed to file briefs with this court.

As we exercised plenary jurisdiction over this matter, but did not relinquish our jurisdiction when we ordered Judge Pellegrini to hold hearings and issue a report, our review of the Pellegrini Opinion is de novo. *Annenberg v.*

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[1] The Pellegrini Opinion is attached at Appendix A.

[2] Petitioners also apparently pursued a state constitutional "one person, one vote" claim before Judge Pellegrini. *See* Pellegrini Opinion at 25. They also raised state constitutional law claims asserting an abridgement of their rights to free speech and free assembly. See Pa. Const. art. 1, §§ 7 and 20. Judge Pellegrini concluded that Petitioners were not entitled to relief on these claims. *See* Pellegrini Opinion at 25, 27-28. In their brief to this court, Petitioners fail to pursue these claims. Thus, they will not be considered by this court.

Commonwealth, 562 Pa. 581, 757 A.2d 338, 343 (Pa. 2000). Yet, we note that "when addressing the findings of fact made by [Judge Pellegrini], although such findings are not binding on us, we will afford them due consideration, as the jurist who presided over the hearings was in the best position to determine the facts." *Id.*

At the outset, we must address the claim raised by Lieutenant Governor/President Pro Tem of the Senate Jubelirer and Speaker Ryan (collectively, "the Presiding Officers") that Petitioners do not have standing to pursue this matter. The Presiding Officers raised this issue below via preliminary objections and Judge Pellegrini opted not to address it. Pellegrini Opinion at 20. They raise two major arguments in support of their position.

First, the Presiding Officers contend that Petitioners cannot attack the constitutionality of the reapportionment plan as a whole. Rather, the Presiding Officers claim that Petitioners have standing to attack the constitutionality of Act 1 only as it relates to their districts, and may not challenge Act 1 with regard to how it draws the lines for other districts in this Commonwealth. In support of this claim, they rely heavily on the U.S. Supreme Court's decision in *United States v. Hays*, 515 U.S. 737, 132 L. Ed. 2d 635, 115 S. Ct. 2431 (1995).

Regardless of whether the Presiding Officers have correctly divined the holding of *Hays* as it relates to a determination of standing in matters commenced in federal court, it does not control our resolution of the standing issue. The U.S. Supreme Court has unequivocally declared that "state courts are not bound to adhere to federal standing requirements ...." *ASARCO Inc. v. Kadish*, 490 U.S. 605, 109 S. Ct. 2037, 2045, 104 L. Ed. 2d 696 (1989). The high Court recognized that in resolving issues of standing, state

courts are not constrained by the dictates of Article III of the United States Constitution. *Id.* Thus, *Hays* does not control the outcome of this issue.

This court has not squarely addressed whether a litigant challenging a plan reapportioning congressional districts may attack the entirety of the plan, or is relegated to complaining about merely the district in which he lives. This gap, however, may be filled by applying our general rule of standing to this matter. We have stated that a party has standing where that party is "aggrieved". *In re T.J.*, 559 Pa. 118, 739 A.2d 478, 481 (Pa. 1999). "For a party to be aggrieved, it must have: 1) a substantial interest in the subject matter of the litigation; 2) the party's interest must be direct; and, 3) the interest must be immediate and not a remote consequence of the action." *Id.* (citations and internal quotation marks omitted).

The Presiding Officers would have us declare that a litigant challenging a reapportionment plan can have a substantial, direct, and immediate interest in only that portion of the plan which drew the lines for his particular district. We believe such a narrow interpretation to be discordant with the reality of challenging a reapportionment scheme. In mounting such an attack, a litigant cannot logically confine his challenge to his particular district. A reapportionment plan acts as an interlocking jigsaw puzzle, each piece reliant upon its neighbors to establish a picture of the whole. An allegation that a litigant's district was improperly gerrymandered necessarily involves a critique of the plan beyond the borders of his district. Thus, we decline to find that a litigant challenging a reapportionment scheme must confine his attack to the drawing of the lines of his own district.

The Presiding Officers also make a brief argument that

political gerrymandering claims may be raised only by the Pennsylvania State Democratic Committee ("Democratic Committee") and not by individual voters.

The Presiding Officers have unwittingly presented an argument that is the mirror-opposite of what we have recently declared to be the law of standing in reapportionment matters. Shortly after the Presiding Officers filed their brief in this matter, we declared that "any entity not authorized by law to exercise the right to vote in this Commonwealth lacks standing to challenge the reapportionment plan." *Albert v. 2001 Legislative Reapportionment Comm'n,* 567 Pa. 670, 679, 790 A.2d 989, 995 (2002). This conclusion was compelled by the fact that it is "the right to vote and the right to have one's vote counted that is the subject matter of a reapportionment challenge . . . ." *Id.* Clearly, a political committee does not have the right, in and of itself, to vote. Thus, contrary to the Presiding Officers' contention, the Democratic Committee (or its leaders acting in their official capacities) are not the only entities that could have standing in this challenge; in fact, the Democratic Committee is specifically denied standing to assert such a challenge.[3] We therefore reject this argument.

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[3] The Presiding Officers also briefly assert that Petitioners are unable to pursue this matter as they never adduced any evidence that Petitioners even exist, and thus Petitioners are no more than straw litigants. This argument must be rejected. The record reveals that Petitioners appended signed verifications that the averments contained in their Petition for Review are true and correct; these averments contain allegations that they are registered Democrats residing within Pennsylvania. Thus, we cannot accept the Presiding Officers' argument that Petitioners lack standing as there is no evidence that they exist.

Furthermore, to the extent that these verifications would be deemed insufficient to establish Petitioners' existence, a remand to Judge Pellegrini to hold a hearing on this limited issue would be a waste of judicial resources as we have determined that Petitioners are not entitled to relief on the substance of their state constitutional law claims.

The Presiding Officers assert that even if Petitioners are the proper parties to bring this challenge, we should still dismiss the matter without examining the merits. They contend that none of the protections afforded by the Pennsylvania Constitution may be extended to congressional elections; rather, they claim that the only applicable constitutional provisions are contained in the U.S. Constitution. In support of this contention, they note that the United States Constitution has given the state legislatures the power to draw congressional reapportionment plans. *See* U.S. Const. art. I, § 4, cl. 1. Thus, they conclude, as the legislature's power to effect a congressional reapportionment derives from the U.S. Constitution, then the Pennsylvania Constitution is inapplicable to a congressional reapportionment plan. They argue that we should thus deny Petitioners relief without examining the substance of the state constitutional law claims.

It is true that the U.S. Constitution has granted our legislature the power to craft congressional reapportionment plans. Yet, we see no indication that such a grant of power simultaneously suspended the constitution of our Commonwealth vis–a–vis congressional reapportionment. Without clear support for the radical conclusion that our Commonwealth's Constitution is nullified in challenges to congressional reapportionment plans, it would be highly inappropriate for us to so circumscribe the operation of the organic legal document of our Commonwealth. We therefore reject this argument.

The Presiding Officers also make a fleeting argument that the free and equal elections clause, Pa. Const. art. 1, § 5,

applies only in elections for offices of the Commonwealth. As the position of representative to the United States Congress is not an office of the Commonwealth, they reason, then this provision has no application to congressional elections. We reject this argument as nothing in the plain language of the free and equal elections clause limits it to elections for Commonwealth officials.

Having determined for the purposes of our review that Petitioners have standing and that the Pennsylvania Constitution applies to congressional reapportionment plans, we may now turn to the substance of Petitioners' challenge. The crux of this dispute is whether Petitioners have established that Act 1 constitutes unconstitutional political gerrymandering in violation of the equal protection guarantee, Pa. Const. art. 1, §§ 1 and 26, and the free and equal elections clause, Pa. Const. art. 1, § 5. As with any legislative enactment, Act 1 enjoys a presumption of constitutionality. *Commonwealth v. Means*, 773 A.2d 143, 147 (Pa. 2001). A plaintiff bears a heavy burden to prove it unconstitutional. "A statute will only be declared unconstitutional if it clearly, palpably and plainly violates the constitution." *Id.* (citations omitted).

This court did not always recognize that a claim of political gerrymandering was cognizable under the Pennsylvania Constitution. *See Newbold v. Osser*, 425 Pa. 478, 230 A.2d 54 (Pa. 1967). This court changed tack, however, in our unanimous decision *In re 1991 Reapportionment*, 530 Pa. 335, 609 A.2d 132 (Pa. 1992), and recognized that a litigant could raise claims that a reapportionment plan effected a political gerrymander and thus violated the U.S. and Pennsylvania Constitutions. This new view on the justiciability of political gerrymandering claims was predicated on the U.S. Supreme Court's decision

in *Davis v. Bandemer*, 478 U.S. 109 (1986), wherein the Court held that such claims were cognizable as a violation of the Equal Protection Clause.

Once having determined that the claim was justiciable, the next task for the *1991 Reapportionment* court was to define the contours of the test for determining whether unconstitutional political gerrymandering had occurred. Unfortunately, a majority of the *Bandemer* Court was unable to agree on the parameters of such a test. While the *Bandemer* Court issued no holding on this point, the 1991 Reapportionment court opted to follow the test set forth by the *Bandemer* plurality. The *1991 Reapportionment* court then proceeded to utilize the test set forth by the *Bandemer* plurality to resolve both federal and state constitutional political gerrymandering claims.

In resolving Petitioners' claim that Act 1 is a political gerrymander in violation of the Pennsylvania Constitution, we will continue the precedent enunciated in *1991 Reapportionment* and apply the test set forth by the *Bandemer* plurality. We reject Petitioners' arguments that we should declare that the right to vote guaranteed by our Commonwealth's Constitution provides broader protections than those guaranteed by the federal Equal Protection Clause. We come to this conclusion for two reasons. First, to the extent that Petitioners' gerrymandering claim is predicated on the equal protection guarantee contained in Pa. Const. art. 1, §§ 1 and 26, this court has previously determined that this right is coterminous with its federal counterpart. *Love v. Borough of Stroudsburg*, 528 Pa. 320, 597 A.2d 1137 (Pa. 1991). Second, we reject Petitioners' claim that the Pennsylvania Constitution's free and equal elections clause provides further protection to the right to vote than does the Equal Protection Clause. Petitioners

provide us with no persuasive argument as to why we should, at this juncture, interpret our constitution in such a fashion that the right to vote is more expansive than the guarantee found in the federal constitution. See generally *Commonwealth v. Edmunds*, 526 Pa. 374, 586 A.2d 887 (Pa. 1991).

While we continue to adhere to the view that the disposition of political gerrymandering claims should be controlled by the *Bandemer* plurality, we are also fully cognizant of the fact the plurality's opinion has bedeviled both commentators and courts, obscuring via its labrynthian twists and turns of logic the precise nature of the standard to be employed. *See, e.g.*, Michael E. Lewyn, *How to Limit Gerrymandering*, 45 Fl. Law Rev. 403, 443 (1993) (The *Bandemer* plurality has "confounded legislators, practitioners, and academics alike. Some find the case internally incoherent; others find a method to the madness." (internal quotation marks and citation omitted)). Yet, we find that by carefully parsing out the plurality's language, we can arrive at a simple (although decidedly not simplistic) recitation of the test. Distilled to its essence, the plurality's test states that a plaintiff raising a gerrymandering claim must establish that there was intentional discrimination against an identifiable political group and that there was an actual discriminatory effect on that group. *Bandemer*, 478 U.S. at 127. In establishing that there has been a discriminatory effect, the plaintiff must show two things: first, he must show that the identifiable group has been, or is projected to be, disadvantaged at the polls; second, he must establish that by being disadvantaged at the polls, the identifiable group will "lack ... political power and [be denied] fair representation." *Id.* at 139 (hereinafter referred to as the "effects test").

The first determination we must make is whether Petitioners have shown that the legislature in crafting Act 1 intentionally discriminated against an identifiable political group. The *Bandemer* plurality candidly recognized that in most instances, intentional discrimination would not be difficult to show since "[a]s long as redistricting is done by a legislature, it should not be very difficult to prove that the likely political consequences of the reapportionment were intended." *Bandemer*, 478 U.S. at 129. In the matter *sub judice*, Judge Pellegrini found that the legislature deliberately drew the congressional districts so as to grant an advantage to the Republican party and thus concluded that there was a discriminatory intent. *See* Pellegrini Opinion at 16 and 27. We see no basis to reject this conclusion.

Judge Pellegrini was not persuaded, however, that Petitioners had shown that citizens who vote Democratic (but are not necessarily registered Democrats) are an identifiable political group. He contended that Petitioners should be denied relief because they had failed to show that "[v]oters who are likely to vote Democratic (or Republican) in a particular district though not registered Democrats (or Republicans) based on the candidates or issues" are an identifiable political group. Pellegrini Opinion at 27.

We cannot agree with such a sweeping conclusion. While we are uncertain whether Petitioners' evidence established that there is an identifiable political class of citizens who vote for Democratic congressional candidates, we also find it to be imprudent to state, as a blanket proposition, that future plaintiffs could never adduce sufficient evidence to establish that such an identifiable class exists. We surmise that, particularly since the field of information technology is advancing at a breakneck speed, such a showing could be made by future challengers. However, it is not incumbent

upon us to resolve this thorny issue as Petitioners' claim falters on another basis. Thus, in this matter, we will assume without deciding that Petitioners have shown the existence of an identifiable political group.

The finding that there was an intent to discriminate and the assumption that Petitioners have shown the existence of an identifiable political class allows Petitioners to clear only the first hurdle of the test set forth by the *Bandemer* plurality. In order to show that there has been unconstitutional political gerrymandering, Petitioners must also show that the reapportionment plan works "an actual discriminatory effect ...." *Bandemer*, 478 U.S. at 127. As noted supra, the plaintiff must prove two things in order to establish an actual discriminatory effect. First, he must show that the reapportionment plan works disproportionate results at the polls; this can be accomplished via actual election results or by projected outcomes of future elections. *Id.* at 139. Second, he must adduce evidence indicating a "strong indicia of lack of political power and the denial of fair representation." *Id.* To meet this second prong of the effects test, the discriminated against group must show that it has "essentially been shut out of the political process." *Id. See also Pope v. Blue*, 809 F. Supp. 392 (W.D.N.C. 1992); *Badham v. Eu*, 694 F. Supp. 664 (N.D. Cal. 1988) (discussing the two prongs of the *Bandemer* plurality's actual discriminatory effects test).

We emphasize that the effects test is conjunctive in nature, and that both showings of an actual discriminatory effect must be made. The plurality explicitly stated that "a group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that makes winning elections more difficult, and a failure of proportional representation alone does not constitute

impermissible discrimination under the Equal Protection Clause." *Bandemer*, 478 U.S. at 132 (citations omitted). The *Bandemer* plurality supported this conclusion by reasoning that "an individual or group of individuals who votes for a losing candidate is usually deemed to be adequately represented by the winning candidate and to have as much opportunity to influence that candidate as other voters in the district. We cannot presume in such a situation, without actual proof to the contrary, that the candidate elected will entirely ignore the interests of those voters." *Id.*

This is unquestionably an onerous standard, difficult for a plaintiff to meet. Yet it was not unwittingly crafted. The *Bandemer* plurality, aware that it was treading on ground that the judiciary had previously declared forbidden to itself, was chary about creating a test that would allow for officious interference with the state legislatures' prerogative to create reapportionment plans. While the *Bandemer* plurality gave notice to the state legislatures that they would no longer be free to construct political gerrymanders with impunity, it recognized that reapportionment is "the most political of legislative functions," one not amenable to judicial control or correction save for the most egregious abuses of that power. *Id.* at 143.[4]

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[4] In this court's recent decision regarding challenges to reapportionment of the Pennsylvania Legislature, three Justices expressed receptiveness to the concern that the Court should not occupy an unduly passive role in the vindication of express state constitutional requirements of compactness and integrity of political subdivisions. *See Albert v. 2001 Legislative Reapportionment Comm'n*, 567 Pa. 670, 688, 790 A.2d 989, 1000 (2002) (Saylor, J., concurring). In the present context of Congressional reapportionment, however, there are no analogous, direct textual references to such neutral apportionment criteria. Accordingly, the significance of these factors to the present equal protection and free and equal election challenges is limited by the

In the matter *sub judice*, Petitioners adduced evidence showing that the number of congressional seats that Republicans are projected to win will be disproportionate to the percentage of the vote Republicans are anticipated to receive statewide. Even if we assume *arguendo* that this evidence establishes that Act 1 will effect disproportionate election results,[5] Petitioners are nonetheless not entitled to relief as they have not shown that there is a "strong indicia of lack of political power and the denial of fair representation." *See Bandemer,* 478 U.S. at 139. As stated *supra*, this prong of the effects test requires a plaintiff to establish that the discriminated against group has effectively been shut out of the political process. Petitioners have failed to meet this burden. First, they have not alleged in their brief to this court that a winning Republican congressional candidate "will entirely ignore the interests" of those citizens within his district who voted for the Democratic candidate. *See Bandemer*, 478 U.S. at 132. Also, it is undisputed that at least five of the districts are "safe seats" for Democratic candidates, thus further undermining Petitioners' claim that Democrats have been entirely shut out of the political process. *See Pope*, 809 F. Supp. at 397 (the party which was allegedly discriminated against had not been shut out of the political process where it was virtually guaranteed to win some seats.)

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degree to which their presence or absence would evidence intent or effects under *Bandemer*.

[5] The Presiding Officers raise a host of issues challenging the admissibility of the evidence adduced by Petitioners at the hearing before Judge Pellegrini. We need not resolve these issues as we find that Petitioners' evidence, even assuming that it is all admissible, is insufficient to entitle them to relief.

Petitioners seem to believe that evidence of disproportionate results necessarily leads to a conclusion that there will also be a lack of political power and denial of fair representation, and that separate proof showing that the Democrats will be shut out of the political process is not necessary. In essence, Petitioners want us to collapse the two prongs of the effects test into one. This is precisely what the *Bandemer* plurality forbad, and we perceive no sound reason to ease Petitioners' burden in this respect.

Accordingly, we find that Petitioners have failed to carry their burden of establishing that Act 1 effectuates a political gerrymander in violation of the Pennsylvania Constitution, and thus deny relief on the state constitutional law claims raised in Petitioners' Petition for Review. As only the state law claims are before this court and those claims are dismissed, jurisdiction is relinquished.

Mr. Chief Justice Zappala files a dissenting opinion.

APPENDIX

RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

On January 10, 2002, JoAnn Erfer and Jeffrey Albert ("Petitioners") filed a Petition for Review in the Nature of a Complaint for Declaratory and Injunctive Relief ("Petition") in the Commonwealth Court of Pennsylvania challenging Act No. 2002-I ("Act 1"). This statute puts into place 19 congressional districts in accordance with the results of the 2000 Census. Named as Respondents were the Commonwealth; the Governor of Pennsylvania Mark Schweiker; Secretary of the Commonwealth, Kim Pizzingrilli; Commissioner of the Bureau of Commissions, Elections and Legislation of the Pennsylvania Department of State, Richard Filling (collectively, the "Commonwealth");

Lieutenant Governor Robert Jubelirer and Speaker of the House of Representatives Matthew Ryan ("Presiding Officers").

Petitioners allege that Act I violates certain constitutional rights under the United States Constitution. As to federal constitutional rights violated, it contends that Act 1 denies or abridges their "right to vote for their Representative to the United States Congress," in violation of U.S. CONST. art. I, § 2, and amendment XIV, § 2 and U.S. CONST. art. I, § 4 (Claim I); denies them "equal protection of the laws as guaranteed to them by the Equal Protection Clause" of amendment XIV, § 1 (Claim II); "constitutes an abridgment of the privileges and immunities of citizenship guaranteed to [them] by the Privilege or Immunities Clause" of amendment XIV, § 1 (Claim III); denies or abridges their "right to free association" as guaranteed to them by amendment I (Claim IV); and "constitute[s] a violation of" 42 U.S.C. § 1983 (Claim V).

Under the Pennsylvania Constitution, they contend that Act 1 denies or abridges their rights "as equally free and independent citizens" under PA. CONST. art. I, § 1 (Claim VI); denies or abridges their right "to a free and equal election" under PA. CONST. art. I, § 5 (Claim VII); discriminates against them in their "exercise of their civil rights" in violation of PA. CONST. art. I, § 26 (Claim VIII); and violates their rights "to assemble together for their common good" and their right to freedom of speech in violation of PA. CONST. art. 1, §§ 7 & 20 (Claim IX).

On January 11, 2002, Petitioners asked Commonwealth Court to expedite consideration of the case and on January 16, 2002, Presiding Officers filed preliminary objections to the Petition. Commonwealth Court ordered an expedited briefing schedule for the preliminary objections with

arguments to be held before Commonwealth Court *en banc* on March 13, 2002.

On January 25, 2002, Petitioners applied to the Supreme Court of Pennsylvania, asking it to assume plenary jurisdiction of the state constitutional claims (Claims VI-IX) under 42 Pa. C.S. § 726 and to expedite consideration. The Supreme Court responded with the following order:

> AND NOW, this 29th day of January, 2002, Petitioners' request that this court exercise plenary jurisdiction over this matter is GRANTED. The matter is REMANDED to the Commonwealth Court for expedited consideration. The Commonwealth Court is to limit its consideration of the matter to the state constitutional claim[s] raised by Petitioners in their Petition for Review that they filed with the Commonwealth Court on January 10, 2002 that is docketed at 10 M.D. 2002. The Commonwealth Court is directed to file its findings of fact and conclusions of law with this court no later than NOON on February 8, 2002.

Order dated 1/29/02 in Dkt. No. 14 MM 2002. By order the same day, a hearing was scheduled for Friday, February 1, 2002.

Also on January 29, 2002, Respondents filed an application to withdraw their preliminary objections, and simultaneously therewith, filed an Answer with New Matter to the Petition and a Third-Party Petition for Review in the Nature of a Complaint for Declaratory Relief, naming as third-party Respondents Richard & Norma Jean Veith and Susan Furey.

A hearing was held on February 1, 2002. Petitioners called six witnesses: Congressman Joseph Hoeffel, Professor David Lublin, Congressman Frank Mascara, Larry Sparr

(Director of Elections for Washington County), Representative William DeWeese (Minority Leader of the House), and Larry Ceisler (a paid partisan consultant & media political pundit).

The following exhibits of Petitioners were admitted over objection. The maps titled by Petitioners as "Conference Committee Plan" are the final maps enacted by Act 1.

Exhibit 1 Map: U.S. Congressional Districts 1992-2001.
Exhibit 2 Map: U.S. Congressional Districts 1992-2201 - Greater Southeast.
Exhibit 6 Map: 2001 Congressional Reapportionment Conference Committee Plan.
Exhibit 7 Map: 2001 Conference Committee Plan - Southeast Pa.
Exhibit 9 Map: 12th & 18th Congressional District - Conference Committee.
Exhibit 11 Map: 2001 Conference Committee Plan, Philadelphia County.
Exhibit 39 Chart: Percentage of the Republican Vote Needed for GOP to Win Seats Based on Statewide Election Results.
Exhibit 40 Graph: Percent of Votes to Elect 14 Republicans (1992) or 13 Republicans (Proposed Plan).
Exhibit 42 Chart: Compactness.
Exhibit 43 Graph: Percent Constituents Retained by Plan and Party.
Exhibit 44 Chart: Percentage of Districts with Above Average Republican Strength.
Exhibit 45 Graph: Average Share of Districts with Above Average GOP Statewide Vote Strength Based on Major-Party Vote.
Exhibit 47 Chart: Treatment of Incumbents: 1st Alternative Plan.

Exhibit 48 Chart: Treatment of Incumbents: Conference Plan.
Exhibit 49 Chart: Treatment of Incumbents: 2nd Alternative Plan.
Exhibit 50 Graph: Estimated Percent Republican Scats.
Exhibit 51 Chart: Partisan Characteristics of Districts: 1st Alternative Plan.
Exhibit 52 Chart: Partisan Characteristics of Districts: Conference Plan.
Exhibit 53 Chart: Partisan Characteristics of Districts: 1992 Plan.
Exhibit 54 Chart: Partisan Characteristics of Districts: 2nd Alternative Plan.
Exhibit 56 Untitled [Compilation of data].

The following stipulated exhibits were also admitted: Petitioners' Exhibit 37 (Resume of Dr. David Lublin) and Respondents' Exhibit 1 (Table: Voter Registration with New 2001 Congressional Districts). The following Petitioners' exhibits were admitted solely as "maps" (*see* Tr. at 204):

Exhibit 13 Map: 2001 Congressional Reapportionment 1st Alternative Plan.
Exhibit 17 Map: 2001 Congressional Reapportionment 2nd Alternative Plan.
Exhibit 55 Map: 2001 Congressional Reapportionment 3rd Alternative Plan.

Findings based on those maps were made together with Exhibit 56.

Because the Supreme Court had assumed plenary jurisdiction and could remand if it found the record was inadequate for it to make a decision, where challenges were made to evidence and where possible, discretion was exercised in favor of admitting evidence and testimony.

Judicial notice has also been taken of certain information that has been attached as an Appendix to Presiding Officers' brief and not introduced at trial.

On February 6, 2002, Petitioners filed an Application to Supplement the Record on the issue of standing which, on February 7, 2002, was denied.

Recommended Findings of Fact

1. Petitioners are JoAnn Erfer or Jeffrey B. Allen who are individuals with standing to maintain this action.

2. Respondents are the Commonwealth of Pennsylvania, Mark Schweiker, Governor of Pennsylvania; Kim Pizzingrilli, Secretary of the Commonwealth; Richard Filling, Commissioner of the Bureau of Commissions, Elections, and Legislation of the Pennsylvania Department of State; Robert C. Jubelirer, Lieutenant Governor and President of the Senate of Pennsylvania; and Matthew J. Ryan, Speaker of the House of Representatives of Pennsylvania.

Background

3. When congressional seats were reapportioned after the 2000 Census, Pennsylvania lost two seats, dropping from 21 to 19. *See* Section 1 of Act I (noting that the Commonwealth was to be divided into 19 congressional districts); *Mellow v. Mitchell*, 530 Pa. 44, 607 A.2d 204 (1992) (Appendix A, dividing the Commonwealth into 21 districts); Tr. at 20 (Hoeffel) (noting that Act 1 "represents 19 seats down from our current 21").

4. Under the 1990 Census, Pennsylvania's total population was 11,881,643, making the "ideal" population for each of Pennsylvania's 21 congressional seats 565,792 or 565,793.

See Mellow v. Mitchell, 530 Pa. 44, 607 A.2d 204 (1992) (Appendix A).

5. Under the 2000 Census, Pennsylvania's total population was 12,281,054, making the "ideal" population for each of Pennsylvania's 19 congressional districts 646,371 or 646,372. *See* THE PENNSYLVANIA MANUAL, *Local Government* (115th edition.) (available on the Pennsylvania Department of State website at www.dgs.state.pa.us/PAManual/home.htm). (Appendix ("App.") Tab D contains copies of all data obtained from the Local Government section of the 115th edition of THE PENNSYLVANIA MANUAL).

6. The total population in Philadelphia decreased from 1,585,577 in 1990 to 1,517,550 in 2000. *See* THE PENNSYLVANIA MANUAL, *Local Government* (115th ed.) (App. Tab D).

7. The total population in Allegheny County decreased from 1,336,449 in 1990 to 1,281,666 in 2000, and the population of the City of Pittsburgh decreased from 369,879 in 1990 to 334,563 in 2000. *See* THE PENNSYLVANIA MANUAL, *Local Government* (115th ed. 2001) (App. Tab D); THE PENNSYLVANIA MANUAL *Local Government* (114th ed. 1999) (App. Tab F).

8. Between 1990 and 2000, significant population growth occurred in the counties surrounding Philadelphia (Chester, Montgomery, Delaware & Bucks), and the Pocono Region (Monroe, Pike & Wayne) as the following chart shows:

County	1990 Population	2000 Population
Bucks	541,174	597,635
Chester	376,396	433,501
Delaware	547,651	550,864
Monroe	95,709	138,687
Montgomery	678,111	750,097
Pike	27,966	46,302
Wayne	39,944	47,722

THE PENNSYLVANIA MANUAL, *Local Government* (115th ed.) (App. Tab D).

9. As of 2001, Pennsylvania has 67 counties and 2,569 cities, townships and boroughs. *See* THE PENNSYLVANIA MANUAL, Local Government (115th ed.) (App. Tab D).

10. Official voter registration data for November 2000 shows there were 7,781,997 registered voters in Pennsylvania: 3,250,764 (41.8%) Republicans; 3,736,304 (48.0%) Democrats; 7,918 (00.1%) Constitution; 30,248 (00.4%) Libertarian; 756,763 (09.7%) Other. *See* Certification No. 2002-11b, Office of the Secretary of the Commonwealth (App. Tab G).

11. Official voter registration data for November 2001 shows there were 7,773,403 registered voters in Pennsylvania: 3,233,171 (41.6%) Republicans; 3,733,766 (48.0%) Democrats; 3,268 (00.04%) Green; 803,198 (10.3%) Other. *See* Certification No. 2002-11b, Office of Secretary of the Commonwealth (App. Tab G).

12. Currently (elected in 2000 under the 1992 court-ordered congressional redistricting plan), there are 11 Republicans and 10 Democrats in Pennsylvania's congressional

delegation. *See* THE PENNSYLVANIA MANUAL, *Federal Government* (115th ed.) (App. Tab H).

13. Under the 1992 court-ordered congressional redistricting plan, Montgomery County was split among five congressional districts with the majority in the 13th district. *See Mellow v. Mitchell*, 530 Pa. 44, 607 A.2d 204 (1992) (Appendix A).

14. Under the 1992 court-ordered congressional redistricting plan (based on the legal description), 16 counties were split, 12 municipalities (cities, townships and boroughs) were split, 4 wards were split. Three of the above municipalities were split at the census block level. *See Mellow v. Mitchell*, 530 Pa. 44, 607 A.2d 204 (1992) (Appendix A).

15. Congressman William Coyne (Democrat) representing the 14th district located in Allegheny County, has announced he will not seek reelection. Tr. at 70 (Lublin) and App. Tab H.

16. There were two statewide elections in 1998 – U.S. Senator and Governor. In the election for U.S. Senator, of the 2,957,499 votes cast, the Republican candidate received 1,814,180 (61.3%), the Democrat candidate received 1,028,839 (34.8%), and the two other candidates received 114,480 (3.9%) of the votes. In the election for Governor, of the 3,024,941 votes cast, the Republican candidate received 1,736,844 (57.4%), the Democrat candidate received 938,745 (31.0%), and the other candidate received 349,352 (11.5%) of the votes. Certification No. 2002-10b, Office of the Secretary of the Commonwealth (App. Tab I).

17. In the only statewide race in 1999 (Superior Court

Judge), of the 4,023,279 total votes cast (two positions were open), the two Republican candidates received a total of 2,075,561 (51.6%) and the two Democrat candidates received a total of 1,947,718 (48.4%) (one Republican and one Democrat were elected). Certification No. 2002-10b, Office of the Secretary of the Commonwealth (App. Tab 1).

18. There were five statewide races in 2000 (President, U.S. Senator, Attorney General, Auditor General, State Treasurer). The following chart shows the results:

	Total Votes Cast	Republican Candidate
President	4,912,185	Election
U.S. Senator	4,735,116	2,481,962 (52.4%)
Attorney General	4,619,438	2,495,253 (54.0%)
Auditor General	4,664,541	1,862,934 (39.9%)
State Treasurer	4,680,934	2,307,422 (49.3%)

	Total Votes Cast	Democrat Candidate	Other Candidate
President	4,912,185	2,485,967 (50.6%)	145,091 (3.0%)
U.S. Senator	4,735,116	2,154,908 (45.5%)	98,246 (2.1%)
Attorney General	4,619,438	1,991,144 (43.1%)	133,041 (2.9%)
Auditor General	4,664,541	2,651,551 (56.9%)	150,056 (3.2%)
State Treasurer	4,680,934	2,211,471 (47.2%)	162,041 (3.5%)

Certification No. 2002-10b, Office of the Secretary of the Commonwealth (App. Tab I).

19. There were seven statewide races in 2001 (Supreme Court Justice, three Commonwealth Court Judges, three Superior Court Judges). The following chart shows the results (all seven Republican candidates won):

Election	Total Votes Cast	Republican Candidate(s)	Democrat Candidate(s)	Other Candidate
Supreme Court	2,005,422	1,051,360 (52.4%)	954,062 (47.6%)	0
Commonwealth Court	5,275,158	2,839,610 (53.8%)	2,435,548 (46.2%)	0
Superior Court	5,376,773	2,899,151 (53.9%)	2,477,622 (46.1%)	0

Certification No. 2002-l0b, Office of the Secretary of the Commonwealth (App. Tab I).

Enactment of Act No. 2002-I

20. Senate Bill 1200 was introduced on November 16, 2001. *See* Legislative History of SB 1200 (available, along with all versions of SB 1200 through the Electronic Bill Room on the General Assembly's website (www.legis.state.pa.us/WUOI LI/BI/billroom.htm)) (App. Tab A).

21. Congressman Joseph Hoeffel (D) testified before the Joint Hearing of the Senate and House State Government Committees on redistricting on November 27, 2001. Tr. at 29-30 (Hoeffel).

22. Congressman Frank Mascara (D) submitted written testimony to the Joint Hearing of the Senate and House State Government Committees on redistricting on November 28, 2001. Tr. at 116 (Mascara).

23. On December 10, 2001, the Senate passed SB 1200, PN 1531, which provided the legal descriptions for 19 congressional districts. Legislative History of SB 1200 (App. Tab A); SB 1200, PN 1531.

24. During debate in the Senate, a member of the Democrat Caucus offered A4552 as an amendment to SB 1200. *See* LEGISLATIVE JOURNAL-SENATE (Dec. 10, 2001) at 42-44 (App. Tab J). The amendment was defeated 27-22. *Id.*

25. The Senate declined to concur in the House amendment to SB 1200. *See* Legislative History of SB 1200 (App. Tab A).

26. The Senate and the House each appointed three members as conferees to a conference committee on SB 1200; the conferees for the House were Reps. Smith, Barley and Veon and the conferees for the Senate were Senators Brightbill, Piccola and Mellow. *See* Legislative History. Rep. DeWeese was not a conferee. Tr. at 149 (DeWeese).

27. On January 2, 2002, the Conference Committee reported a version agreed to by four of the six members (Reps. Smith and Barley and Senators Brightbill and Piccola). *See* SB 1200, PN 1645 (App. Tab B).

28. On January 3, 2002, the Senate, after debate, passed the Conference Committee Report on SB 1200 by a 28-22 vote. *See* Legislative History of SB 1200 (App. Tab A).

29. On January 3, 2002, the House, after debate, passed the Conference Committee Report on SB 1200 by a 139-52 vote, with 42 Democrats voting in favor of the bill. *See* Legislative History of SB 1200 (App. Tab A) and Tr. at 31-32, 107-08, 149-50.

30. Forty-two of the 98 members of the Democrat Caucus of the House of Representatives voted in favor of Act 1. Tr. at 149-150 (DeWeese). Without the vote of the 42 House Democrats, Act 1 would not have passed. *See* PA. CONST. art. II. § 10 (102 votes are needed for final passage); Proposed Finding of Fact 29 (final vote was 132-59).

After certification by the Presiding Officers of the Senate and House, SB 1200 was forwarded to Governor Schweiker, who, on January 7, 2002, signed SB 1200 into law as Act No. 2002-1 ("Act 1"). *See* Certified Copy of the Act 1 (App. Tab C); *see also* Legislative History of SB 1200 (App. Tab A).

The Effect of Act 1

30. Of the 19 districts put in place under Act 1, voter registration figures for the districts as of 2000 show that seven have a majority Republican registration and seven have a majority Democrat registration. Of the remaining five districts, three have a plurality Republican registration and two have a plurality Democrat registration. Respondents' Ex. I. The chart below shows the actual registration figures and percentages for each of the 19 districts:

Congressional District	Republican Registration	Democrat Registration	Other
1	83,648 (19.69%)	314,219 (73.96%)	26,967 (6.35%)
2	62,564 (13.65%)	360,599 (78.65%)	35,312 (7.70%)
3	171,435 (44.05%)	182,454 (46.89%)	35,263 (9.06%)
4	168,115 (38.55%)	225,631 (51.74%)	42,353 (9.71%)
5	190,842 (50.88%)	145,735 (38.86%)	38,481 (10.26%)
6	209,105 (49.87%)	150,634 (35.92%)	59,600 (14.21%)
7	279,835 (62.03%)	119,762 (26.55%)	51,547 (11.42%)
8	208,392 (48.75%)	160,289 (37.50%)	58,791 (13.75%)
9	190,087 (52.90%)	137,561 (38.28%)	31,714 (8.82%)
10	198,012 (52.06%)	147,823 (38.86%)	34,520 (9.08%)

Congressional District	Republican Registration	Democrat Registration	Other
11	135,536 (34.92%)	217,168 (55.96%)	35,389 (9.12%)
12	107,919 (27.30%)	259,845 (65.74%)	27,513 (6.96%)
13	209,502 (47.79%)	187,967 (42.88%)	40,882 (9.33%)
14	78,419 (17.31%)	335,317 (74.04%)	39,173 (8.65%)
15	164,599 (41.98%)	174,188 (44.43%)	53,273 (13.59%)
16	214,334 (57.52%)	106,083 (28.47%)	52,213 (14.01%)
17	203,089 (52.87%)	141,621 (36.86%)	39,443 (10.27%)
18	167,683 (37.05%)	242,385 (53.55%)	42,544 (9.40%)
19	207,675 (54.11%)	126,830 (33.04%)	49,318 (12.85%)

31. Under Act 1, Montgomery County is split among six congressional districts with the largest portion in the 13th district. *See* Section 1 of Act 1 (Legal Description). Under the court-ordered 1992 plan, Montgomery County was split among five congressional districts.

32. Under Act 1, there are five congressional districts in which it is safe to assume an incumbent Democrat congressman will win re-election (if the incumbent runs) in 2002. The five congressmen are Reps. Murtha, Kanjorski, Fatah, Brady and Doyle. Tr. at 22 (Hoeffel); Tr. at 165, 179, 189 (Ceisler).

33. Under Act 1, there is a district (District 6) in which no incumbent resides. Tr. at 33. 18 (Hoeffel).

34. Congresswoman Melissa Hart (District 4), a Republican, currently represents a district with a majority of registered Democrat voters, *see* Tr. 38 (Hoeffel). Under Act 1, District 4 continues to have a majority of registered Democrat voters (51.7% Democrat to 38.5% Republican). Respondents' Ex. 1.

Hearing Evidence

36. At the hearing, Petitioners presented evidence from six witnesses, including two sitting members of Congress, one member of the Pennsylvania General Assembly, and two expert witnesses. Respondents chose to present no witnesses, but did enter into the record evidence of voter registration totals in the districts created by Act 1.

37. Registered Democrat voters in Pennsylvania frequently "split" their votes among the candidates of various parties and "cross-over" to vote for Republican candidates. Tr. at 35 (Hoeffel); Tr. at 103 (Mascara); Tr. at 196 (Ceisler); *see* Proposed Findings of Fact 16-19.35.

38. The Pennsylvania Democrat party, according to Petitioners' witness, consists of "people who hold office in the Democratic party, people who aspire to hold office in the Democratic party, Democrats who have Democratic party ideals and vote Democratic." Tr. at 195 (Ceisler).

39. In Pennsylvania, only registered Democrat voters can sign nominating petitions and vote for those seeking to be nominated as the Democrat candidate for public office.

Section 802 of the Pennsylvania Election Code, Act of June 3, 1937, P.L. 1333, as *amended,* 25 P.S. § 2832.

40. Registered Republican voters in Pennsylvania frequently "split" their votes among the candidates of various parties and "cross-over" to vote for Democrat candidates. Tr. at 194 (Ceisler); *see* Proposed Findings of Fact 16-19.

41. Dr. David Lublin, an Assistant Professor of Government at American University and an expert in voting rights, redistricting and the statistical study of elections and redistricting plans, testified for Petitioners concerning the likely partisan effect of Act 1. Exh. 37; Tr. at 51:6-52:11 (Lublin).

42. In analyzing Act 1, Dr. Lublin used voting data from 19 prior statewide elections - including all of the federal statewide elections and all statewide executive office races from the 1990s - to analyze how the people in Act 1's districts would have voted under a variety of electoral conditions. Exhs. 39, 44, 56; Tr. at 54:13-55:11 (Lublin). Through this technique of "reaggregating" elections from the 1990s, Dr. Lublin was able to determine how particular districts in Act 1 lean (*i.e.,* Republican or Democratic) and whether particular incumbents are likely to be re-elected. Tr. 54:15-56:12 (Lublin).

43. To determine which way districts lean, Professor Lublin computed an average of votes on a district-by-district basis and then determined how many districts performed above or below that average for a party.

44. To determine whether a particular incumbent was likely to be re-elected, Dr. Lublin also looked at the districting plan

that was in effect throughout the 1990s. For those incumbents who have historically won in districts that lean against the incumbent's party, Dr. Lublin assumed they would continue to win if the district did not change very much. Tr. at 55:19-56:12 (Lublin).

45. Petitioners also presented the testimony of Mr. Larry Ceisler, a political consultant and expert in Pennsylvania politics. Mr. Ceisler used his experience and knowledge of Pennsylvania and past elections to explain the likely impact of Act 1 as well as the impetus behind its passage. Tr. at 157:15-160:22, 165:03-04, 165:19-167:22, 168:08-19, 170:24-171:23; 173:24-174:15, 175:17-176:10, 176:20-177:12, 192:07-11 (Ceisler).

The Effect of Act 1 on Party Membership on the Congressional Delegation

46. Act 1, the congressional redistricting plan passed by the General Assembly in January 2002 and signed into law by the Governor, creates only five or six districts that Democrats are likely to win out of 19, giving Republicans a 13-6 or 14-5 likely advantage in the Pennsylvania congressional delegation - even if they receive less than half the votes cast, in which case there is a reasonable likelihood that Democratic candidates will be able to prevail in 2002 and beyond.

47. Act 1 pairs two incumbent Democratic Congressmen into District 13, Congressmen Hoeffel and Borski. Exh. 7; Tr. at 18:14-18:16 (Hoeffel). Congressman Hoeffel testified that it is highly probable that Congressman Borski would defeat him in the Democratic primary but he would lose the general election to a moderate Republican from the Montgomery

County portion of District 13. About 53 percent of the 13th District's population live in Montgomery County and about 47 percent live in Philadelphia. Tr. at 19:7-19:19 (Hoeffel). Indeed, Melissa Brown, a Republican from Montgomery County, has already announced her intention to run. Tr. at 19:20-20:13 (Hoeffel). Brown, who is pro-choice, would likely defeat the pro-life Congressman Borski. Tr. at 166:07-167:22 (Ceisler).

48. Under Act 1, Congressman Holden, a Democrat, who is paired in the 17th District with Congressman Gekas, a Republican, is likely to be defeated in a seat that strongly favors the Republican. Exh. 6; Tr. at 21:15-21:18 (Hoeffel). Act 1 also pairs Democratic Congressmen Doyle and Coyne; Coyne has indicated he will retire.

49. Congressman Mascara is not paired with an incumbent, but Act 1 places him in a radically reconfigured district which heavily favors a specific Republican challenger - State Senator Tim Murphy. Tr. at 97:24-99:09, 109:15-23 (Mascara).

50. Act 1 congressional districts have wide disparities in the proportion of constituents that Democratic and Republican incumbents retain from their old districts.

51. The congressional districts drawn by Act 1 was for the purpose and intent to elect more Republican members to Congress than Democrats. See, e.g., Exhs. 6, 39, 40, 48, 50; Tr. at 53:10-15, 64:14-68:10 (Lublin); 165:03-04 (Ceisler).

District Lines

52. Under Act 1, lines were drawn using census tracts rather than precincts, i.e., voting or election districts. Act 1 splits six election precincts or voting districts into multiple congressional districts, doubling the number of precinct splits in the 1992 plan. Act 1; Exh. 56 at 25, 28.

53. Act 1's District 6 is an irregular, "dragon-shaped" district that covers three counties in southeast Pennsylvania and includes several wholly distinct, unconnected communities of interest. Exh. 7; Tr. at 16:9-16:24 (Hoeffel). District 6 is centered in rural Chester County, extends deeply into Berks County, and then comes into Montgomery County at Limerick Township just below Pottstown, includes the borough of Pottstown itself, swings to the east and then down towards the south through the center of Montgomery County to pick up the county seat of Norristown and Lower Merion Township. Exh. 7; Tr. at 16:9-16:24 (Hoeffel). In so doing, District 6 combines the relatively unrelated rural parts of Chester and Berks County with the "densely settled suburban" communities of Norristown, Plymouth, Lower Merion and Narberth in Montgomery County. Exh. 7; Tr. at 16:18-16:24 (Hoeffel).

54. Act I divides up western Pennsylvania as can best be seen by the jagged and irregular line between Districts 12 and 18.

55. Act 1's districts are significantly less compact than under prior plans in Pennsylvania. Professor Lublin analyzed compactness using two separate measures - "Perimeter Measure" and "Dispersion Measure" - that are generally accepted in Professor Lublin's field and widely used in

redistricting cases. Exh. 42; Tr. at 78:12-78:15 (Lublin). Using Professor Lublin's "Perimeter Measure Analysis," four of Act 1's districts - Districts 1, 6, 12 and 18, are less compact than the least compact district under the 1992 plan. Exh. 42. On average, Act 1's districts are less compact than those in prior decades. Exh, 42; Tr. at 80:1-5 (Lublin).

56. Act 1 divides 65 municipalities in comparison with only 13 municipal splits in the 1992-2001 map, a fivefold increase. Tr. at 177:04-12 (Ceisler). Petitioners' Alternate Plans 1 and 2 split only 18 municipalities. Tr. at 177:04-19 (Ceisler). District 12 by itself splits more than 20 townships. Exh. 6. Act 1 also splits *25* counties into multiple districts, up from 18 county splits under the 1992 plan. Exh. 6; Exh. 56, at 25-27.

Alternate Plans

57. Petitioners submitted into evidence three alternative redistricting plans to highlight the bias in Act 1. Exhs. 13, 17, 55. Exhibits 13, 17 and 55 are labeled alternative plans 1, 2 and 3, respectively.

58. None the alternative plans were before the General Assembly. Tr. at 80 (Petitioners' counsel). *See* Exhibits 13, 17 and 55. Petitioners' Exhibit 56 is composed of all the data on which Dr. Lublin relied, including data on compactness, population deviation, electoral results, etc. Exh. 56, Tr. at 80:9-13 (Lublin). All data used by Dr. Lublin was derived from the General Assembly through the House Minority Demographics office. Tr. at 55:8-55:11 (Lublin). All conclusions are based on the accuracy of Exh. 56, at 19. 21. 22.

59. Alternate Plans 1 and 2 split no precincts. Exh. 56, at 21-24, 29-32. Splitting election precincts will cause problems "for ballot tabulation, counting and casting." Tr. at 125:5-127:12, 128:14-128:18 (Spahr).

60. Both Alternate Plans 1 and 2 would likely result in a 10-9 Republican advantage in Pennsylvania's congressional delegation. Exhs. 47, 49, 50; Tr. at 53:15-19, 73:21-74:8 (Lublin); Tr. at 177:20-25 (Ceisler). Alternates 1 and 2 would pair one set of Democrats and one set of Republicans. Tr. at 179:10-16 (Ceisler). Each eliminates one incumbent Democrat and one incumbent Republican. Exh. 13; 22:22-23:17 (Hoeffel).

61. Alternate Plans 1 and 2 also have more compact districts on average than Act 1. Exh. 42; Tr. at 80:1-5 (Lublin). Alternate Plans 1 and 2 split fewer counties and municipalities than Act 1. Plaintiffs' 1st Alternate Plan splits 24 counties, 18 municipalities, 0 precincts. Exh. 56, at 29-30. Plaintiffs' 2nd Alternate Plan splits 23 counties, 18 municipalities. 0 precincts. Exh. 56, at 31-32.

62. Plaintiffs' 1st Alternate Plan has a maximum population deviation of 19 people (646,361 people in District 7, 646,380 people in District 8). Exh. 56, at 21. Plaintiffs' 2nd Alternate Plan has a maximum population deviation of 15 people (646,365 people in District 14, 646,380 people in Districts 16 and 19). Exh. 56, at 23.

CONCLUSIONS OF LAW

1. Because the Commonwealth has withdrawn its preliminary objections, it has waived the issue of Petitioners' standing. Pa. R. C. P. No. 1019; *In Re: Estate of Alexander*, 758 A.2d 182 (Pa. Superior Ct. 2000). Presiding Officers still

have outstanding preliminary objections, including one addressing standing, and until those preliminary objections are heard, Petitioners are presumed to have standing for the purpose of this proceeding.

2. Petitioners bear the burden of proving that Act 1 is unconstitutional. *Singer v. Sheppard*, 464 Pa. 387, 346 A.2d 897 (1975); *In re Ross Township Election District Reapportionment*, 489 A.2d 297 (Pa. Cmwlth. 1985). There is a presumption in favor of constitutionality and "all doubt is to be resolved in favor of sustaining the legislation." *Id.* (quoting *Milk Control Commission v. Battista*, 413 Pa. 652, 659, 198 A.2d 840, 843 (1964)). "An Act of Assembly will not be declared unconstitutional unless it *clearly, palpably and plainly* violates the Constitution." *Singer*, 464 Pa. at 393, 346 A.2d at 900 (quoting *Daly v. Hemphill*, 411 Pa. 263, 271, 191 A.2d 835, 840 (1963)) (emphasis added). The standard is no different when the challenge is to a redistricting plan. *In re Ross Township Election District Reapportionment*, 489 A.2d 297 (Pa. Cmwlth. 1985), *affd.*, 514 Pa. 41, 522 A.2d 553 (1987).

3. Article I, Section 4, Clause 1 of the United States Constitution provides that, "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof: ....."

4. Article 2, § 16 of the Pennsylvania Constitution provides for the reapportionment of the General Assembly. It states that:

> The Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative

district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

5. Article 2, § 11 of the Pennsylvania Constitution requires and provides for the reapportionment of local municipalities, providing:

> Within the year following that in which the Federal decennial census is officially reported as required by Federal law, and at such other times as the governing body of any municipality shall deem necessary, each municipality having a governing body not entirely elected at large shall be reapportioned, by its governing body or as shall otherwise be provided by uniform law, into districts which shall be composed of compact and contiguous territory as nearly equal in population as practicable, for the purpose of describing the districts for those not elected at large.

6. While 19 states have adopted state constitutional provisions regulating Congressional reapportionment, at least one of which mandated districts that were "contiguous and compact," *see Brown v. Saunders*, 159 Va. 28, 166 S.E. 195 (Va. 1932) (discussion of Section 55 of the Virginia Constitution), there is no Pennsylvania constitutional provision specifically dealing with Congressional reapportionment.

7. Although the General Assembly derives its authority over congressional redistricting from the U.S. Constitution, and there is no express state constitutional provision regulating congressional reapportionment, it does not follow that any other applicable provisions of the Pennsylvania Constitution would not be controlling on the Pennsylvania General

Assembly. The General Assembly is created by the Pennsylvania Constitution and is bound by its provisions. To find otherwise would mean that the 19 State Constitutions that have specific constitutional provisions would not be binding on their legislatures.

8. Article 1, § 5 of the Pennsylvania Constitution provides that:

> Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

9. In the context of a challenge to reapportionment by the General Assembly, Article 1, § 5 of the Pennsylvania Constitution, has been interpreted as follows:

> Elections are free and equal within the meaning of the Constitution when they are public and open to all qualified electors alike; when every voter has the same right as any other voter; when each voter under the law has the right to cast his ballot and have it honestly counted; when the regulation of the right to exercise the franchise does not deny the franchise itself, ... and when no constitutional right of the qualified elector is subverted or denied him.

In re 1991 Pennsylvania Legislative Reapportionment Commission, 530 Pa. 335, 356, 609 A.2d 132, 142 (1992), quoting from *City Council of City of Bethlehem v. Marcincin*, 512 Pa. 1, 8, 515 A.2d 1320, 1232 (1986) (quoting *Shankey v. Staisey*, 436 Pa. 65, 69, 257 A.2d 897, 898 (1969), *cert. denied*, 396 U.S. 1038, 24 L. Ed. 2d 682, 90 S. Ct. 684 (1970)).

10. In *In re 1991 Pennsylvania Legislative Reapportionment Commission*, our Supreme Court addressed a claim of

political gerrymandering, a claim of deprivation of free and equal elections, and a violation of equal protection under the state constitutional provisions at issue here and the [14]th Amendment to the United States Constitution. Without making a separate analysis for each issue, it found determinative of all the state and federal constitutional claims the three-prong test set forth by the Supreme Court of the United States in *Davis v. Bandemer*, 478 U.S. 109 (1986). That analysis requires that the plaintiff establish:

> 1. intentional discrimination against an identifiable political group;
>
> 2. an actual discriminating effect on that group; and
>
> 3. a history of disproportionate results appear[ing] in conjunction with strong indicia of lack of political power and the denial of fair representation.

In adopting the *Bandemer* analysis, the Pennsylvania Supreme Court went on to state that, "this Court is persuaded by the holding of the Supreme Court of the United States with regard to the elements of a prima facie case of political gerrymandering." *In re 1991 Pennsylvania Legislative Reapportionment Commission*, 530 Pa. at 355, 609 A.2d at 142.

11. No Pennsylvania cases have addressed whether Article 1, § 5 of the Pennsylvania Constitution applies to congressional redistricting processes. It appears that in order to make out a violation of Article 1, § 5 within the context of congressional redistricting, the same elements that must be shown for a violation under the equal protection clause of the Fourteenth Amendment and Article I, §§ 1 & 26 of the Pennsylvania

Constitution must be met. *In re 1991 Pennsylvania Legislative Reapportionment Commission.*

12. Article 1, § 26 of the Pennsylvania Constitution provides:

> Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

13. Article 1, § 1 of the Pennsylvania Constitution provides that:

> All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

14. Article I, §§ 1 & 26, together, constitute an equal protection guarantee. *See Love v. Borough of Stroudsburg*, 528 Pa. 320, 597 A.2d 1137 (1991). The guarantee promises protection at least as strong as the Equal Protection Clause of the United States Constitution's Fourteenth Amendment. If Act 1 violates the Fourteenth Amendment's Equal Protection Clause, it *a fortiori* violates Pennsylvania's equal protection guarantee.

15. Partisan gerrymandering cases in congressional redistricting are justiciable under the Pennsylvania Constitution. *In re 1991 Pennsylvania Legislative Reapportionment Comm'n.*

16. Petitioners contend that their rights under Article 1, § 5 to a free and equal election and Article I, §§ 1 & 26 to equal protection guaranteed by the Pennsylvania Constitution have been violated because:

- There is no justification for the nineteen vote disparity between Congressional districts. Act 1 violates the constitutional requirement of "one-person-one vote."

- Pennsylvania elections should be structured in such a way that when parties demonstrate equal levels of public support, Congressional Districts must be reapportioned in such a way so as to demonstrate a rough correlation between that support and the number of seats that each party receives. Because Act I allows Republican congressional candidates to gather fewer than half of the votes but more than twice - and perhaps nearly three times - as many seats as Democrats, petitioners argue that Act 1 is outside any margin of error that the Free and Equal Elections clause can be interpreted to permit.

17. The nineteen vote disparity does not violate the one-person-one vote requirement because the deviation is *de minimus*. In *In re Pennsylvania Legislative Reapportionment Commission*, 609 A.2d at 147 (Pa. 1992), our Supreme Court noted that it has approved legislative reapportionment total percentage deviations from ideal district population of:

	Senate	House
1991	1.87%	4.94%
1981	1.93%	2.81%
1971	4.31%	5.45%

18. Even assuming that justification for such a *de minimus* difference was needed, the splitting of municipal boundaries would not be a factor in showing a lack of justification because, unlike for legislative reapportionment, there is no requirement that municipal boundaries be taken into

consideration in a Congressional Reapportionment. Moreover, Petitioners failed to meet its burden that the deviation is not justified and that some deviation is unavoidable, no matter what the plan, because census districts, let alone voting districts, are not equal in population.

19. No court has addressed what should be considered an identifiable political group but "as a threshold matter, plaintiffs must show that they are members of an identifiable political group whose voting strength has been diluted. They must first prove that they belong to a politically salient class...", *Karcher v. Daggett*, 462 U.S. 725, 754 (1983) (Stevens, J., concurring), and identify with at least some degree of specificity, what group has been denied an effective vote. *See Shaw v. Reno*, 509 U.S. 630 (1993).

20. Because out of the 19 districts created under Act 1, seven have a majority Republican registration and seven have a majority Democrat registration, and of the remaining five districts, three have a plurality Republican registration and two have a plurality Democrat registration, Petitioners make no claim that voters registered as Democrats have been discriminated against. But they do claim that because of ticket splitting, census tracts, in which voters that are registered in one party often ticket split to vote another way or on an issue, have been amalgamated in such a way to give Republicans the advantage.

21. Voters who are likely to vote Democratic (or Republican) in a particular district though not registered Democrats (or Republicans) based on the candidates or issues are not an identifiable political salient class necessary to establish a violation under Article I, § 5 and Article I, §§ 1 & 26 of the Pennsylvania Constitution. *See* Conclusion of Law 10 & 19.

22. While the congressional districts were drawn to give Republican candidates and Republican incumbents an advantage through a sophisticated analysis of voting trends, matching of issues, matching of potential candidates and residency of candidates, none of that conduct discriminates against any identifiable political group. Because they have not shown that the rights of any identifiable political group have been violated, Petitioners have failed to set forth a cause of action that Article I, § 5 and Article I, §§ 1 & 26 of the Pennsylvania Constitution have been violated.

23. Art. 1, § 7 of the Pennsylvania Constitution provides:

> The printing press shall be free to every person who may undertake to examine the proceedings of the Legislature or any branch of government, and no law shall ever be made to restrain the right thereof The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. No conviction, shall be had in any prosecution for the publication of papers relating to the official conduct of officers or men in public capacity, or to any other matter proper for public investigation or information, where the fact that such publication was not maliciously or negligently made shall be established to the satisfaction of the jury; and in all indictments for libels the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

24. Petitioners have failed to propose any findings or conclusion regarding and, in any event, the Petition fails to state a claim for which relief can be granted on this claim.

25. Article I, § 20 of the Pennsylvania Constitution provides

that:

> The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.

26. Petitioners have failed to propose any findings or conclusion regarding Article I, § 20, and, in any event, the Petition fails to state a claim for which relief can be granted on this claim.

27. Because Petitioners have failed to make out a claim that any provision of the Pennsylvania Constitution has been violated, their Petition should be dismissed.

Respectfully submitted,

DAN PELLEGRINI, JUDGE

COMMONWEALTH COURT OF PENNSYLVANIA

ORDER

AND NOW, this 8th day of February, 2002, it is hereby Ordered that the attached Amended Recommendation Findings of Fact and Conclusions of Law be filed in the above-captioned case.

AMENDED RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Paragraph 5 of the Recommended Conclusions of Law is amended to read:

5. Article 9, § 11 of the Pennsylvania Constitution requires and provides for the reapportionment of local municipalities, providing:

> Within the year following that in which the Federal decennial census is officially reported as required by Federal law, and at such other times as the governing body of any municipality shall deem necessary, each municipality having a governing body not entirely elected at large shall be reapportioned, by its governing body or as shall otherwise be provided by uniform law, into districts which shall be composed of compact and contiguous territory as nearly equal in population as practicable, for the purpose of describing the districts for those not elected at large.

Respectfully submitted,

DAN PELLEGRINI, JUDGE

Commonwealth Court of Pennsylvania

AMENDED RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Paragraph 46 of the Recommended Findings of Fact is amended to read:

46. Act 1, the congressional redistricting plan passed by the General Assembly in January 2002 and signed into law by the Governor, creates only five or six districts that Democrats are likely to win out of 19, giving Republicans a

13-6 or 14-5 likely advantage in the Pennsylvania congressional delegation - even if they receive less than half the votes cast, in which case there is a reasonable likelihood that Republican candidates will be able to prevail in 2002 and beyond.

Respectfully submitted,

DAN PELLEGRINI, JUDGE

Commonwealth Court of Pennsylvania

MR. CHIEF JUSTICE ZAPPALA

I find that the General Assembly's plan violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and would remand with directions to the General Assembly to reapportion the federal congressional districts. The evidence presented before the Commonwealth Court establishes that the current reapportionment plan was formulated so as to intentionally discriminate and dilute the vote of an identifiable political group and had an actual discriminatory effect on that group.[1]

Although I agree with the majority's resolution of the standing issue, I feel compelled to address the overzealous nature of the arguments made in this regard. The unusual argument has been made that Petitioners lacked standing to

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[1] This case is distinguishable from *Albert v. 2001 Legislative Reapportionment Comm'n*, 567 Pa. 670, 790 A.2d 989 because there the challengers failed to establish the elements of political gerrymandering. The challengers in *Albert* primarily focused upon the compactness and contiguousness of their individual districts. Their claims did not object to the plan as a whole. Here, Petitioners offered sufficient evidence of the unconstitutional statewide impact of the congressional redistricting plan.

bring this challenge to the congressional reapportionment plan because they failed to demonstrate that they have never voted for a political candidate who was not a Democrat. It is asserted that Petitioners did not establish standing to complain on behalf of the Democratic Party for that reason.

It would come as a great surprise to registered Republicans or Democrats who have cast votes in elections for candidates who were not members of the same party that they are not "true" Republicans or Democrats, but instead some unidentifiable political group. It is suggested that a voter in this Commonwealth must always choose the candidate offered by his or her own party in order to be a "true" Republican or Democrat. No voter can fail to represent his or her party by selecting the candidate believed to be the best-suited to represent the citizens of this Commonwealth.

In the final analysis, it is the individual who possesses integrity, sound judgment and the ability to lead, rather than follow, who will truly serve his or her constituents. These qualities are not within the exclusive domain of any political party. When voting patterns are used then as the foundation to ensure the continued success of one particular party, as here, the principles of the U.S. Constitution are defeated and we are all ill-served.

The assertion that Petitioners lack standing to enforce those constitutional principles has no support in our jurisprudence. It is claimed that Petitioners failed to establish that they have standing to pursue a political gerrymandering claim because they have failed to show individualized harm and have alleged and presented only harm to a group. It is argued that the group's interest in litigation challenging a statewide plan as a partisan gerrymander could be asserted by the Pennsylvania Democrat State Committee or its

leaders.

As noted by the majority, this Court examined the principle of standing in the context of a challenge to the reapportionment of state legislative districts in *Albert*. We held that "any entity not authorized by law to exercise the right to vote in this Commonwealth lacked standing to challenge the reapportionment plan." *Id.* at 995. This holding did not represent a new principle of law; instead it followed the well-established test for standing articulated by this Court in *William Penn Parking Garage, Inc. v. Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (Pa. 1975) and the U.S. Supreme Court's decision in 1964 in *Reynolds v. Sims*, 377 U.S. 533 (1964).

We stated in *Albert* that

> it is the right to vote and the right to have one's vote counted that is the subject matter of a reapportionment challenge. Significantly, as noted by the United States Supreme Court in *Reynolds v. Sims*, "the right to vote is personal" and "the rights sought to be vindicated in a suit challenging an apportionment scheme are 'personal and individual'" 377 U.S. at 554-555 (citing *United States v. Bathgate*, 246 U.S. 220, 227, 62 L. Ed. 676, 38 S. Ct. 269 (1916)); *South v. Peters*, 339 U.S. 276, 280, 70 S. Ct. 641, 94 L. Ed. 834 (1950).

Id. at 994-95.

Following the narrow framework of their view of standing, Respondents have developed their argument that Petitioners have failed to demonstrate a violation of the Equal Protection Clause of the Fourteenth Amendment. Although this analysis would deny a registered voter the opportunity to raise a constitutional challenge on behalf of

his or her political party, and limit this right to some nebulous prototype voter, this Court has not done so. Instead, we have recognized that protection is afforded to the voter, rather than to a party.

In *Davis v. Bandemer*, 478 U.S. 109 (1986) (plurality opinion), the United States Supreme Court addressed an equal protection challenge to Indiana's 1981 legislative reapportionment of the state's legislative districts pursuant to the 1980 census. The appellees, several Indiana Democrats, challenged the reapportionment plan, alleging that the plan constituted a political gerrymander intended to disadvantage Democrats. A three-judge panel of the United States District Court for the Southern District of Indiana was convened to hear the claims. Elections were held under the new districting plan before the case was heard. Two years later, the divided district court issued a decision declaring the reapportionment to be unconstitutional and ordered the legislature to prepare a new plan. The United States Supreme Court reversed. A majority of the Court concluded that political gerrymandering was a justiciable question, but concluded that the district court had applied the incorrect standard in finding unconstitutional vote dilution.

The context in which the equal protection challenge arose is relevant to our discussion. Indiana's legislature consisted of 100 members of the House of Representatives and 50 members of the Senate. The reapportionment plans created 50 single member districts for the Senate; in the House of Representatives, it provided for 7 triple-member, 9 double- member, and 61 single-member districts. County and city lines were not consistently followed, although township lines generally were. Each Senate district was not divided exactly into two House districts and there was little relation between the lines drawn in the Senate and House plans.

When the elections were first held under the new districting plans, all of the House seats and half of the Senate seats were up for election. As described by the Supreme Court, Democratic candidates received 51.9% of the vote over all the House races statewide, but only 43 Democrats were elected to the House. In two counties, which had been divided into multi- member House districts, Democratic candidates obtained 46.6% of the vote, but secured only 3 of 21 House seats. In the races for 25 senatorial seats, Democratic candidates received 53.1% of the statewide vote, resulting in the election of 13 Democrats.

The district court found support for the challengers' position in the election results and concluded that further examination of the circumstances surrounding the reapportionment was warranted. The court noted the irregular shape of district lines, the fact that multi-member districts were suspect in terms of compactness, and that district lines failed to adhere consistently to boundaries of political subdivisions.[2] The court found that explanations offered for the configuration of the districts to be inadequate.

These factors led the district court to conclude that the reapportionment plan had been drawn intentionally to favor Republican incumbents and candidates and to disadvantage Democratic voters. The court found this was achieved by "stacking" Democrats into districts with large Democratic majorities and "splitting" them in other districts so as to give Republicans safe, although not excessive, majorities in those districts. The U.S. Supreme Court described these tactics as

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[2] The district court's analysis of these factors is reflective of the type of analysis undertaken by this Court in addressing challenges to the state reapportionment plan in *Albert*, *supra*.

> familiar techniques of political gerrymandering. Democratic (or Republican, as the case may be) votes are "stacked" and "wasted" by creating districts where Democrats form majorities much greater than the 50% necessary to carry those districts. Concurrently, Republican votes are spread among districts in which they form safe, perhaps 55% majorities, and Democratic votes are "cracked" or "split" by dispersing them in such a way as to be ineffectual.

478 U.S. at 117, n.6. The district court invalidated the reapportionment plan, finding that the plan had a discriminatory effect in that the proportionate voting influence of Democratic voters had been adversely affected.

Part II of the U.S. Supreme Court's opinion, which was authored by Justice White and joined by five other Justices, addressed the question of whether the case presented a justiciable controversy or a nonjusticiable political question. In addressing that issue, Justice White observed that

> Since *Baker v. Carr*, 369 U.S. 186, 7 L. Ed. 2d 663, 82 S. Ct. 691 (1962), we have consistently adjudicated equal protection claims in the legislative districting context regarding inequalities in population between districts. In the course of these cases, we have developed and enforced the "one person, one vote" principle. *See, e.g. Reynolds v. Sims*, 377 U.S. 533, 12 L. Ed. 2d 506, 84 S. Ct. 1362 (1964).

478 U.S. at 118.

Justice White further explained that "in formulating the one person, one vote formula, the Court characterized the question posed by election districts of disparate size as an issue of fair representation."

> In such cases, it is not that anyone is deprived of a vote or that any person's vote is not counted. Rather, it is that one electoral district elects a single representative and another district of the same size elects two or more – the elector's vote in the former district having less weight in the sense that he may vote for and his district be represented by only one legislator, while his neighbor in the adjoining district votes for and is represented by two or more.

Id. at 123. "Since the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment, we conclude that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of State legislators." *Id.* at 123-24 (citation omitted).

He noted that challenges premised upon political gerrymandering differ from those based upon claims that districts of disparate size violated the equal protection clause, stating that

> not only does everyone have the right to vote and to have his vote counted, but each elector may vote for and be represented by the same number of lawmakers. Rather, the claim is that each political group in a State should have the same chance to elect representatives of its choice as any other political group. Nevertheless, the issue is one of representation, and we decline to hold that such claims are never justiciable.

Id. at 124 (emphasis added).

The Court concluded that the fact that the claim was brought by a political group, rather than a racial group or a group claiming that a reapportionment plan diluted the

weight of votes because of place of residence, simply did not justify a refusal to entertain such a claim. "That the characteristics of the complaining group are not immutable or that the group has not been subject to the same historical stigma may be relevant to the manner in which the case is adjudicated." *Id.* at 125.

Having determined that the appellees had presented a justiciable claim, the Court then discussed whether the district court had erred in holding that the appellees had alleged and proved a violation of the equal protection clause. Part III of Justice White's opinion, however, garnered only three other votes.[3] The Court was unable to reach a consensus on the issue of what a claimant must prove in order to establish vote dilution in this context. Discussion of the plurality's analysis is necessary, however, to illustrate the Court's perceived failings in the appellees' presentation of their equal protection claim.

The Court agreed with the district court that in order to succeed the appellees were required to prove both intentional discrimination against an identifiable political group and an actual discriminatory effect on that group. The Court declined to overturn the district court's finding of discriminatory intent as clearly erroneous, finding that the record presented would support a finding that the discrimination was intentional. Acknowledging the political realities of districting and apportionment, and that "the political profile of a State, its party registration, and voting records are available precinct by precinct, ward by ward", the Court observed that "as long as redistricting is done by a

[3] Justices Brennan, Marshall and Blackmun joined Part III of Justice White's opinion.

legislature, it should not be very difficult to prove that the likely political consequences of the reapportionment were intended." *Id.* at 129 (footnote omitted).[4]

The Court found, however, that appellees had failed to establish a sufficiently adverse effect on their constitutionally protected rights under the equal protection clause. The district court had identified the political group suffering discrimination as those voters who voted for Democratic Assembly candidates in Indiana's 1981 election and relied primarily on the results of that single election to meet the requirements of a political gerrymandering claim.[5] The Court concluded that relying upon a single election to prove unconstitutional discrimination was unsatisfactory. The Court stated,

> The District Court did not find that because of the 1981 Act the Democrats could not in one of the next few elections secure a sufficient vote to take control of the assembly. Indeed, the District Court declined to hold that the 1982 election results were the predictable consequences of the 1981 Act and expressly refused to hold that those results were a reliable prediction of future ones. The District Court did not ask by what percentage the statewide Democratic vote would have had to increase to control either the House or the Senate. The

[4] The court cautioned, however, that the fact that intentional discrimination may not be difficult to demonstrate did not relieve a challenger of the burden of proof.

[5] As noted above, in that election Republican candidates received 48.1% of the votes cast statewide for the House of Representatives, but won 57 of the 100 seats to be filled. As for the Senate, Republican candidates received 46.9% of the votes cast statewide, but won 12 of the 25 seats to be filled.

> appellants argue here, without a persuasive response from the appellees, that had the Democratic candidates received an additional few percentage points of the votes cast statewide, they would have obtained a majority of the seats in both houses. Nor was there any finding that the 1981 reapportionment would consign the Democrats to a minority status in the Assembly throughout the 1980's or that the Democrats would have no hope of doing any better in the reapportionment that would occur after the 1990 census. Without findings of this nature, the District Court erred in concluding that the 1981 Act violated the Equal Protection Clause.

Id. at 135-36 (emphasis added).

The Court determined that the appellees had failed to demonstrate that there had been an unconstitutional discrimination against members of the Democratic party by premising their claim solely upon the results of a single election. "[A] mere lack of proportionate results in one election cannot suffice in this regard." *Id.* at 139. Equal protection violations will be found only where a history (actual or projected) of disproportionate results appears in conjunction with strong indicia of lack of political power and the denial of fair representation. *Id.* at 139-40.

The Court was not indifferent, however, to the fact that discriminatory effects need not be suffered first before an equal protection claim could be brought. "*Projected* election results based on district boundaries and past voting patterns may certainly support this type of claim even where *no* election has yet been held under the challenged districting." *Id.* at 40 n.17.

The case before us stands in stark contrast to *Bandemer*. Petitioners here have amply demonstrated that the

reapportionment plan improperly diluted the votes of Democrats in violation of the equal protection clause. As required by the *Bandemer* court, Petitioners have established that the reapportionment plan was intentionally drawn so as to deprive the influence of Democratic voters on the political process as a whole. They have demonstrated also that the plan effectively secures an advantage to Republican candidates of 13-6 or 14-5 in the Pennsylvania congressional delegation. The continual succession of Republican candidates is also achieved by the reasonable likelihood that they will prevail in 2002 and beyond.

Undisputedly, an equal protection challenge will not be sustained merely because particular candidates may not win in any given election. The U.S. Constitution was not designed to promote particular campaigns. What is at stake, and what is entitled to protection, is more sacred. It is the fundamental principle that we are governed by democracy and not oligarchy.

When that fundamental principle is disregarded, as in this case, we have lost more than the representation of a Republican or Democratic elected official in the United States Congress.

Here, Respondents have focused on whether individual voters may be adequately represented by any winning candidate. They have ignored, however, the more significant inquiry posed by the U.S. Supreme Court. The issue is not whether any elected official has the ability to represent his or her constituent. No election, and no constitution, can guarantee any voter capable representation.

The issue is whether the reapportionment plan has denied voters of a fair chance to influence the political process. This inquiry focuses not on the effects of a single election, but on

the election process itself. It is when this inquiry is undertaken that the constitutional flaws of this reapportionment plan are revealed.

The following findings of fact made by Judge Dante Pellegrini of the Commonwealth Court demonstrate a violation of the equal protection clause of the Fourteenth Amendment:

Hearing Evidence

36. At the hearing, Petitioners presented evidence from six witnesses, including two sitting members of Congress, one member of the Pennsylvania General Assembly, and two expert witnesses. Respondents chose to present no witnesses, but did enter into the record evidence of voter registration totals in the districts created by Act 1.

37. Registered Democrat voters in Pennsylvania frequently "split" their votes among the candidates of various parties and "cross-over" to vote for Republican candidates. Tr. at 35 (Hoeffel); Tr. at 103 (Mascara); Tr. at 196 (Ceisler); *see* Proposed Findings of Fact 16-19.35.

38. The Pennsylvania Democrat party, according to Petitioners' witnesses, consists of "people who hold office in the Democratic party, people who aspire to hold office in the Democratic party, Democrats who have Democratic party ideals and vote Democratic." Tr. at 195 (Ceisler).

39. In Pennsylvania, only registered Democrat voters can sign nominating petitions and vote for those seeking to be nominated as the Democrat candidate for public office. Section 802 of the Pennsylvania Election Code, Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. § 2832.

40. Registered Republican voters in Pennsylvania frequently "split" their votes among the candidates of various parties and "cross-over" to vote for Democrat candidates. Tr. at 194 (Ceisler); *see* Proposed Findings of Fact 16-19.

41. Dr. David Lublin, an Assistant Professor of Government at American University and an expert in voting rights, redistricting and the statistical study of elections and redistricting plans, testified for Petitioners concerning the likely partisan effect of Act 1. Exh. 37; Tr. at 51:6-52:11 (Lublin).

42. In analyzing Act 1, Dr. Lublin used voting data from 19 prior statewide elections - including all of the federal statewide elections and all statewide executive office races from 1990s - to analyze how the people in Act 1's districts would have voted under a variety of electoral conditions. Exhs. 39, 44, 56; Tr. at 54:13-55:11 (Lublin). Through this technique of "reaggregating" elections from the 1990s, Dr. Lublin was able to determine how particular districts in Act 1 lean (*i.e.*, Republican or Democratic) and whether particular incumbents are likely to be re-elected. Tr. 54:15-56:12 (Lublin).

43. To determine which way districts lean, Professor Lublin computed an average of votes on a district-by-district basis and then determined how many districts performed above or below that average for a party.

44. To determine whether a particular incumbent was likely to be re- elected, Dr. Lublin also looked at the districting plan that was in effect throughout the 1990s. For those incumbents who have historically won in districts that lean against the incumbent's party, Dr. Lublin assumed they would continue to win if the district did not change very much. Tr. at 55:19- 56:12 (Lublin).

45. Petitioners also presented the testimony of Mr. Larry Ceisler, a political consultant and expert in Pennsylvania politics. Mr. Ceisler used his experience and knowledge of Pennsylvania and past elections to explain the likely impact of Act 1 as well as the impetus behind its passage. Tr. at 157:15-160:22, 165-03-04, 165:19-167:22, 168:08-19, 170:24-171:23; 173:24-174:15, 175:17-176:10, 176:20-177:12, 192:07-11 (Ceisler).

The Effect of Act 1 on Party Membership on the Congressional Delegation

46. Act 1, the congressional redistricting plan passed by the General Assembly in January 2002 and signed into law by the Governor, creates only five or six districts that Democrats are likely to win out of 19, giving Republicans a 13-6 or 14-5 likely advantage in the Pennsylvania congressional delegation - even if they receive less than half the votes cast, in which case there is a reasonable likelihood that Republican candidates will be able to prevail in 2002 and beyond.[6]

47. Act 1 pairs two incumbent Democratic Congressmen into District 13, Congressmen Hoeffel and Borski. Exh. 7; Tr. at 18:14-18:16 (Hoeffel). Congressman Hoeffel testified that it is highly probable that Congressman Borski would defeat him in the Democratic primary but he would lose the general election to a moderate Republican from the Montgomery County portion of District 13. About 53 percent of the 13th District's population live in Montgomery County and about 47

[6] Paragraph 46 reflects the amended finding of fact submitted by Judge Pellegrini. The amendment deleted a typographical error in the original submission of his findings of fact.

percent live in Philadelphia. Tr. at 19:7-19:19 (Hoeffel). Indeed, Melissa Brown, a Republican from Montgomery County, has already announced her intention to run. Tr. at 19:20-20:13 (Hoeffel). Brown, who is pro-choice, would likely defeat the pro-life Congressman Borski. Tr. at 166:07-167:22 (Ceisler).

48. Under Act 1, Congressman Holden, a Democrat, who is paired in the 17th District with Congressman Gekas, a Republican, is likely to be defeated in a seat that strongly favors the Republican. Exh. 6; Tr. at 21:15-21:18 (Hoeffel). Act 1 also pairs Democratic Congressmen Doyle and Coyne; Coyne has indicated he will retire.

49. Congressman Mascara is not paired with an incumbent, but Act 1 places him in a radically reconfigured district which heavily favors a specific Republican challenger - State Senator Tim Murphy. Tr. at 97:24-99:09, 109:15-23 (Mascara).

50. Act 1 congressional districts have wide disparities in the proportion of constituents that Democratic and Republican incumbents retain from their old districts.

51. The congressional districts drawn by Act 1 was for the purpose and intent to elect more Republican members to Congress than Democrats. See, e.g., Exhs. 6, 39, 40, 48, 50; Tr. at 53:10-15, 64:14-68:10 (Lublin); 165:03-04 (Ceisler).

District Lines

52. Under Act 1, lines were drawn using census tracts rather than precincts, i.e., voting or election districts. Act 1 splits six election precincts or voting districts into multiple congressional districts, doubling the number of precinct splits in the 1992 plan. Act 1; Exh. 56 at 25, 28.

53. Act 1's District 6 is an irregular, "dragon-shaped" district that covers three counties in southeast Pennsylvania and includes several wholly distinct, unconnected communities of interest. Exh. 7; Tr. at 16:9-16:24 (Hoeffel). District 6 is centered in rural Chester County, extends deeply into Berks County, and then comes into Montgomery County at Limerick Township just below Pottstown, includes the borough of Pottstown itself, swings to the east and then down towards the south through the center of Montgomery County to pick up the county seat of Norristown and Lower Merion Township. Exh. 7; Tr. at 16:9-16:24 (Hoeffel). In so doing, District 6 combines the relatively unrelated rural parts of Chester and Berks County with the "densely settled suburban" communities of Norristown, Plymouth, Lower Merion and Narberth in Montgomery County. Exh. 7; Tr. at 16:18- 16:24 (Hoeffel).

54. Act 1 divides up western Pennsylvania as can best be seen by the jagged and irregular line between Districts 12 and 18.

55. Act 1's districts are significantly less compact than under prior plans in Pennsylvania. Professor Lublin analyzed compactness using two separate measures - "Perimeter Measure" and "Dispersion Measure" - that are generally accepted in Professor Lublin's field and widely used in redistricting cases. Exh. 42; Tr. at 78:12-78:15 (Lublin). Using Professor Lublin's "Perimeter Measure Analysis," four of Act 1's districts - Districts 1, 6, 12 and 18, are less compact than the least compact district under the 1992 plan. Exh. 42. On average, Act 1's districts are less compact than those in prior decades. Exh. 42; Tr. at 80:1-5 (Lublin).

56. Act 1 divides 65 municipalities in comparison with

only 13 municipal splits in the 1992-2001 map, a fivefold increase. Tr. at 177:04-12 (Ceisler). Petitioners' Alternate Plans 1 and 2 split only 18 municipalities. Tr. at 177:04-19 (Ceisler). District 12 by itself splits more than 20 townships. Exh. 6. Act 1 also splits 25 counties into multiple districts, up from 18 county splits under the 1992 plan. Exh. 6; Exh. 56, at 25-27.

As the U.S. Supreme Court observed, "the question is whether a particular group has been unconstitutionally denied its chance to effectively influence the political process." *Bandemer*, 478 U.S. at 132-33. The record reveals that the answer is yes. If the record of this case does not establish unconstitutional political gerrymandering, no such claim exists. This Court should not then waste its valuable judicial resources entertaining illusory claims that, in reality, can never be established.

Thus, I dissent.

Appendix E

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, NORMA JEAN VIETH, and SUSAN FUREY,	)
Plaintiffs,	)
v.	) No. 1: CV 01-2439
	) Judge Rambo,
THE COMMONWEALTH OF PENNSYLVANIA; MARK S. SCHWEIKER, et al	) Judge Yohn, Judge) Nygaard
Defendants.	)

NOTICE OF APPEAL OF PLAINTIFFS RICHARD VIETH, NORMA JEAN VIETH, and SUSAN FUREY

Plaintiffs Richard Vieth, Norma Jean Vieth, and Susan Furey hereby appeal to the Supreme Court of the United States from the Order and Judgment entered in this manner on January 24, 2003. The appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully submitted,

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By /s/ Robert B. Hoffman

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Dated: February 24, 2003

Appendix F

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, NORMA JEAN VIETH, and SUSAN FUREY,
Plaintiffs,
v.

THE COMMONWEALTH OF PENNSYLVANIA; MARK S. SCHWEIKER, in his official capacity as Governor of Pennsylvania; KIM PIZZINGRILLI, in her official capacity as Secretary of the Commonwealth of Pennsylvania; RICHARD FILLING, in his official capacity as Commissioner of the Bureau of Commissions, Elections, and Legislation of the Pennsylvania Department of State; ROBERT C. JUBELIRER, in his official capacity as Lieutenant Governor of Pennsylvania and President of the Pennsylvania Senate; MATTHEW J. RYAN, in his official capacity as Speaker of the Pennsylvania House of Representatives,
Defendants.

NO. 3:CV-01-2439

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The plaintiffs have brought this action to enforce voting rights guaranteed to them by the United States Constitution. As registered Democrats and voters in the Commonwealth of Pennsylvania, the plaintiffs have exercised, and wish to continue exercising, their right to vote

for their preferred candidates for United States Representative, both in general elections and in Democratic Party primary elections. The congressional districting plan that the Pennsylvania General Assembly imposed on the Commonwealth on January 3, 2002, however, violates plaintiffs' rights under the United States Constitution.

PARTIES

2. Plaintiff Richard Vieth is a registered Democrat and under the new districting plans resides in District 16. He resides at 632 Laurel Lane, Lancaster, Pennsylvania 17601.

3. Plaintiff Norma Jean Vieth is a registered Democrat and under the new districting plans resides in District 16. She resides at 632 Laurel Lane, Lancaster, Pennsylvania 17601.

4. Plaintiff Susan Furey is a registered Democrat and a resident of Montgomery County. She resides at 507 Bryn Mawr Avenue, Bala Cynwyd, Pennsylvania, 19004. Under the districting plan established in 1992, Furey resided in District 13. Under the new districting plan, Furey resides in District 6, which is overpopulated and non-compact.

5. Defendants are the Commonwealth of Pennsylvania and officials thereof who have duties and responsibilities under the laws of the Commonwealth to redraw congressional districts in Pennsylvania following the release of population data from each federal decennial census and then to conduct elections in those districts. Defendant Mark S. Schweiker is the Governor of Pennsylvania. Defendant Kim Pizzingrilli is the Secretary of the Commonwealth and oversees Pennsylvania's electoral process. Defendant Richard Filling is the Commissioner of

the Bureau of Commissions, Elections, and Legislation of the Pennsylvania Department of State, which is charged with administering functions related to Pennsylvania's electoral process. Defendant Robert C. Jubelirer is the Lieutenant Governor of Pennsylvania and President of the Pennsylvania Senate. Defendant Matthew J. Ryan is the Speaker of the Pennsylvania House of Representatives.

JURISDICTION AND VENUE

6. This Court has exclusive jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), 1343(a)(4), 1357, 2201, 2202, and 2284. Venue is proper in this district under 28 U.S.C. § 1391(b).

RELEVANT STATE AND FEDERAL CONSTITUTIONAL PROVISIONS

7. Section 2 of Article I of the United States Constitution, as amended by Section 2 of the Fourteenth Amendment, provides, in part, that "[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States" and that "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State . . . ."

8. Section 4 of Article I of the United States Constitution grants limited authority to the Legislature of each State to determine "[t]he Times, Places and Manner of holding elections for . . . Representatives." As the Supreme Court of the United States has recognized, State Legislatures are more limited in their authority to draw congressional

districts than they are under their inherent power to draw their own state legislative districts.

9. In the First Amendment to the Bill of Rights, the United States Constitution protects the rights of freedom of speech and association.

10. The Equal Protection Clause of Section 1 of the Fourteenth Amendment prohibits any State from "deny[ing] to any person within its jurisdiction the equal protection of the laws."

11. The Privileges and Immunities Clause of Section 1 of the Fourteenth Amendment prohibits any State from "abridg[ing] the privileges or immunities of citizens of the United States."

12. Together these constitutional provisions embody fundamental guarantees that every citizen, regardless of race or political party, will have a fair and equal opportunity to cast a meaningful ballot for members of Congress and a fair and meaningful opportunity to be represented by a person of their choice in the United States Congress. These guarantees include, among other things, the one-person, one-vote principle – requiring each of a State's congressional districts to contain the same number of persons, absent a legitimate justification – and the prohibition against invidious partisan gerrymanders, which operate to consistently degrade the votes of a particular disfavored group.

THE 1992 CONGRESSIONAL PLAN AND THE 2000 CENSUS

13. In March 1992, the Supreme Court of Pennsylvania ordered into effect a congressional districting

plan establishing Pennsylvania's 21 current congressional districts. Although that plan did not achieve perfect population equality among the districts, the Supreme Court ruled that slight deviations in population can be justified when the deviations are necessary to protect other important districting interests such as the preservation of local municipal boundaries. The plan that the Supreme Court ordered into effect split 27 localities (including 19 counties and 8 cities, towns, and boroughs) and 3 election precincts; the Supreme Court rejected a competing plan that had a smaller population deviation on the grounds that it split 48 localities (including 21 counties and 27 cities, towns, and boroughs) and 22 election precincts. *See Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992). The Pennsylvania Supreme Court also found that the plan they adopted was fair to both major political parties.

14. After the Supreme Court ordered the 1992 plan into effect, a three-judge federal court reviewed its validity. The three-judge court ruled that the Pennsylvania Supreme Court's plan was valid, and in interpreting *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992), recognized that, "the Pennsylvania Supreme Court identified in its opinion the avoidance of municipal splits as an important public policy of the Commonwealth." The Court wrote, "This conclusion is a matter of Pennsylvania state law and we are bound by it." *Nerch v. Mitchell*, No. 92-0095, slip op. at 32 - 33 (M.D. Pa. Aug. 13, 1992) (per curiam).

15. Under the 1992 Plan, which was used for the most recent congressional elections in November 2000, citizens of the Commonwealth of Pennsylvania cast almost an identical number of votes for Democratic candidates as

for Republican candidates, and elected 11 Republicans and 10 Democrats to Congress.

16. The 2000 election was the last under the 1992 plan drawn by the Pennsylvania Supreme Court. On December 28, 2000, the Secretary of Commerce reported to the President of the United States the tabulation of population for each of the fifty States, including the defendant Commonwealth of Pennsylvania, as determined in the 2000 decennial census. Those population figures showed that Pennsylvania is now entitled to only 19 Representatives in Congress – a decrease of two Representatives since the 1990 census. The census data also show that Pennsylvania's resident population as of April 1, 2000, was 12,281,054 persons – 646,371 or 646,372 persons for each of the 19 congressional districts.

17. During its regular session in 2001, the General Assembly was unable to reach agreement on a congressional redistricting plan. The State House of Representatives passed one plan and the State Senate passed a different plan. The General Assembly adjourned on December 13, 2001, at an impasse.

18. Before and after the deadlock, national Republican leaders sought to use the Pennsylvania congressional redistricting process, which was wholly controlled by the Republican General Assembly and Republican governor, to achieve national political ends, rather than to reach a result in the interests of the people in Pennsylvania. National Republican leaders pressured Pennsylvania legislators to push for maximum partisan advantage, regardless of the cost. Karl Rove, a political advisor to President George W. Bush – who lost in

Pennsylvania – asked state Republicans to favor the plan passed by the state Senate rather than the more moderate House plan. Rep. Thomas M. Davis III, a Republican of Virginia and the chairperson of the National Republican Congressional Committee, stated publicly that Pennsylvania would serve as a payback for whatever redistricting successes Democrats might have had elsewhere. "Democrats rewrote the book when they did Georgia, and we would be stupid not to reciprocate," he said. Pennsylvania "will make Georgia look like a picnic." Press accounts report that Pennsylvania House Majority Leader John Perzel also received phone calls from Republican Sen. Rick Santorum and House Speaker Dennis Hastert regarding the importance of maximizing the number of seats that would elect Republicans and thus rigging the districts against the Democratic party and the interests of Democratic voters.

THE NEW CONGRESSIONAL PLAN

19. Following the end of the General Assembly's regular session, Republicans from the House and Senate worked to reach agreement on a plan that would satisfy the interests of their Republican colleagues and the national Republican party. At all points, Democratic state legislators, including those on the Conference Committee, were shut out of this process. Democratic leaders in the House and Senate were presented, for the first time, with a final version of a proposed congressional redistricting plan on the morning of the conference committee on January 2, 2002. The Democratic members of the Conference Committee had no input whatsoever on the final plan. The Conference Committee voted this plan out on straight party lines.

20. On January 3, 2002, the General Assembly passed the new congressional redistricting plan, Senate Bill 1200 (SB1200). That plan, delineating 19 congressional districts to comport with reapportionment following the 2000 Census, not only fails to equalize the population of each congressional district, but also ignores all traditional redistricting criteria, including the preservation of local government boundaries, solely for the sake of partisan advantage.

21. Under SB 1200, the Commonwealth's most populated district, District 7, would have a population of 646,380. The Commonwealth's least populated districts, Districts 1, 2, and 17, would each have populations of 646,361. This creates a total population deviation of 19, which is lower than the total population deviation in the 1992 plan, but in contrast to the 1992 plan, the new plan's deviation serves no recognizable legitimate interest: rather than protecting municipal boundaries, the plan splits units of local governments throughout the state among multiple districts. SB 1200 splits 84 local governments, including 25 counties and 59 cities, boroughs, or townships, as well as 41 wards. (To avoid double counting, Philadelphia for these purposes has been treated as a county, not as both a county and a city.) Montgomery County alone is split into six different congressional districts. This is in sharp contrast with the plan drawn by the Pennsylvania Supreme Court in 1992, which recognized the importance of preserving local government boundaries and split only 19 counties and 8 cities, townships, and boroughs.

22. SB 1200 also ignores all other traditional redistricting criteria, thus demonstrating that partisanship – and nothing else – was the rationale behind the plan. Rather

than protecting communities of interest, it fractures them, substituting meandering and irregular lines through the state. District 6, for example, looms like a dragon descending on Philadelphia from the west, splitting up towns and communities throughout Montgomery and Berks Counties. District 7 is barely contiguous. District 8 includes an ungainly gash that at one point narrows to 300 yards and extends five and a half miles into Montgomery County, nearly splitting neighboring District 13 in two. District 12 snakes through several counties, leaving no fewer than 25 split cities, towns, and boroughs. Not surprisingly, the districts in SB 1200 are far less compact than those in the 1992 plan.

23. In constructing SB1200, the General Assembly did not attempt to preserve the cores of existing districts (which minimizes voter confusion by displacing fewer voters from their current districts), protect incumbents, establish partisan balance, or advance any of the legitimate redistricting criteria recognized by the United States Supreme Court or by scholars in the field of redistricting. Rather, the General Assembly's purpose and intent in enacting SB 1200 was to maximize the representation of Republican interests and minimize the representation of Democrats, no matter what the cost. Indeed, rather than preserving the seniority and power of the Pennsylvania congressional delegation, thereby enhancing Pennsylvania's clout in Washington, the General Assembly sought to replace Democratic members who have seniority with first-term Republicans. As Republicans in the General Assembly have explained, rigging the electoral system in favor of Republicans will advance the policy agenda of current President Bush, which they believe should be in the interests

of all residents of the Commonwealth – regardless of the fact that a majority of citizens voted against President Bush.

PARTISAN IMPACT OF SB 1200

24. The partisan effects of SB 1200 are massive. As Democratic state legislators have explained, SB 1200 is a "massacre." SB 1200 ensures that the voting preferences of the residents of Pennsylvania will *not* be reflected in congressional elections and consistently degrades the votes of Democratic voters in the Commonwealth.

25. In terms of voter preferences, the two major political parties hold nearly equal support among Pennsylvania residents, with a slight preference for Democrats. Registered Democrats outnumber registered Republicans 3,733,739 to 3,233,171, a division between the two major parties of 53.6% to 46.4%.

26. Further, on neutral playing fields free from partisan gerrymandering, Democrats consistently perform competitively in Pennsylvania elections. In twenty-one congressional races during the 2000 elections, the aggregate vote for Democrats was 2,279,227, or 50.6%, while the aggregate vote for Republicans was 2,229,057, or 49.4% of the major parties' vote totals.

27. Democrats also received more total votes than Republicans in the five statewide races in 2000, as Democrats received 11,495,041 votes to Republicans' 11,428,698, a margin of 50.1% to 49.9%. (The vote totals in those elections include the race for President, with Democrat Al Gore receiving 2,485,967 votes (50.6% of all votes cast) to Republican George Bush's 2,281,127 votes (46.4%); the

race for Attorney General, in which incumbent Republican Mike Fisher received 2,495,253 votes (55.6% of votes for major party candidates) and Democrat Jim Eisenhower received 1,991,144 votes (44.4%); the race for Auditor General, in which incumbent Democrat Bob Casey, Jr. received 2,651,551 votes (58.7% of votes for major party candidates) and Republican Katie True received 1,862,934 votes (41.3%); the race for State Treasurer, in which the incumbent Republican Barbara Hafer received 2,307,422 votes (51.1% of votes for major party candidates) to Democrat Catherine Knoll Baker's 2,211,471 votes (48.9%); and the race for United States Senator, in which incumbent Republican Rick Santorum received 2,481,962 votes (53.5% of votes for major party candidates) to Democrat Ron Klink's 2,154,908 votes (46.5%).)

28. The new plan will have serious consequences on the Pennsylvania congressional delegation's ability to represent the preferences of Pennsylvania voters. Despite the Commonwealth's 50/50 split between Democrats and Republicans – or, more accurately, its slight preference for Democrats – the new plan will likely result in a congressional delegation consisting of 13 Republicans and 6 Democrats. Some Republicans have boasted that their majority will be even greater, producing a 14-to-5 edge. Thus, even if they continue, as they have, to receive more than 50% of the vote in congressional elections, Democratic candidates will win less than 1/3 of the seats in Congress; Republicans, receiving less than half of the total votes cast, will receive twice (and almost three times) as many congressional seats.

HARM CAUSED BY SB 1200

29. SB 1200 harms the people of Pennsylvania, particularly Democratic voters, such as plaintiffs, and the Democratic Party, in several distinct ways. First, SB 1200 dilutes the votes of people living in districts that are overpopulated, i.e., contain more than 646,371 people. Those districts include Districts 4, 6, 7, 9, 10, 11, 13, 14, 15, and 19. It does so without any legitimate justification.

30. SB 1200 is also an egregious partisan gerrymander. A partisan gerrymander refers to a district-based election system that rigs a political system in favor of one party. Indeed, Congress has outlawed the use of multi-member districts in drawing congressional districts, 2 U.S.C. § 2(c), precisely because such districts allow a majority party in the state legislature to rig the congressional elections in their favor. A partisan gerrymander does precisely the same thing.

31. By "packing" voters of one party in some districts and "cracking" or fragmenting them in others, a partisan gerrymander ensures that one party wins more representation than its voting strength would otherwise allow. It thus dilutes the voting strength of voters of the other party. The effect of a partisan gerrymander is often referred to as bias – the lines are drawn in such a way as to favor (to be biased toward) one party, which is able to win more representation with fewer votes.

32. SB 1200 is a massive political gerrymander. It packs and fragments Democratic voters to ensure that their votes are worth less than Republican votes. Thus, although Pennsylvania is a 50/50 state, SB 1200 was designed to

ensure that Republicans would win at least 13 of the 19 congressional seats. In terms of bias, SB 1200 gives Republicans a bias of over 18% – for less than 50% of the votes, they receive at least 68% of the seats in Congress. The plan does not merely fail to apportion seats proportionally; it maximizes the Republicans' partisan advantage to the exclusion of all other criteria. In terms of magnitude, SB 1200 is one of the most egregious partisan gerrymanders in recent history. It is significantly worse than that challenged in *Davis v. Bandemer*, 478 U.S. 109 (1986), in which the Supreme Court recognized the justiciability of partisan gerrymandering. It gives one party a two- or three-to-one advantage based on nothing other than the packing and cracking of voters.

33. This bias will not apply in simply one political election, but will affect every future election under SB 1200, regardless of the political conditions. It cements Republican power and effectively reduces Democrats to being a small minority of the Commonwealth's congressional delegation for the coming election and likely the coming decade.

34. By diluting the voting strength of Democratic voters, SB 1200 operates to minimize or cancel out the votes of Democrats, solely because the dominant party in the State Legislature does not like their political point of view and how they vote. SB 1200 consistently and systematically degrades the influence of Democratic voters on the political process as a whole, denies them fair representation, and penalizes Democratic voters for their views. Given that Democratic voters make up a small majority of the voters in Pennsylvania, SB 1200 will frustrate the will of the majority to influence the political process.

35. The harms caused by SB 1200 go well beyond the statewide dilution of Democratic voting strength. SB 1200 dramatically affects the Democratic Party's prospects for success in congressional elections in Pennsylvania in other ways and will operate to reduce the choices that voters, and particularly Democratic voters, will have in Pennsylvania elections. Political success depends on a variety of factors, including party organizing, recruitment of viable candidates, fund-raising, and voter turnout efforts. These factors, in turn, depend in large part on the party's potential for success. Because of the bias created by SB 1200, the Democratic Party will have greater difficulty in fielding competitive candidates. Further, those candidates who do run will find it more difficult to raise the money necessary to compete effectively, because potential donors will be hesitant to support losing candidates.

36. By locking down control of the congressional delegation, Republicans have leveraged their control over other aspects of the Pennsylvania political structure to essentially shut Democrats and Democratic voters out of the political process. Republicans already control the General Assembly and the Governor's office; SB 1200 itself is evidence that they will use that political power to minimize the voice of Democratic voters so that they might advance the Republican agenda in Pennsylvania and in national politics. SB 1200 installs the Republican Party as the dominant party in Pennsylvania – based solely on bias and unfairness, not on votes.

37. Democratic voters, such as plaintiffs, will also suffer harm due to the impact of SB 1200 on representation of Pennsylvania voters. The fact that 13 or 14 districts are now designated as "Republican districts" means that

Pennsylvania Democrats – who compose a majority of the state – will now be increasingly represented by members of Congress who do not represent their views. As with race, when a district – indeed an entire state's redistricting plan is obviously created solely to effectuate the interests of one political group, elected officials are more likely to believe that their primary obligation is to represent only the members of that group, rather than the constituency as a whole. Indeed, the presumption that a winning candidate represents all of the district's constituents is not as strong here as it is in the case of a racial gerrymander, where there is no necessary connection between a voter's or candidate's race and his or her political views. In a partisan case, the presumption no longer holds, because the connection between one's partisan affiliation and his or her political views is much closer than the connection between a voter's race and his or her political views. Even those voters whose political views do not perfectly correlate with their representatives' views are better represented by a representative of their own political party than one of another party. Although representatives may still be responsive to the interests of independent voters whose vote they may aim to capture, they are non-responsive to – and can entirely ignore – voters who support the opposing party.

38. SB 1200 also harms plaintiffs and other Democratic voters in Pennsylvania because it clearly and improperly draws distinctions and doles out benefits on the basis of political party. Unlike a redistricting plan that seeks to balance partisan success between the two parties or one which takes politics into account, SB 1200 creates favored and disfavored groups, and sends a clear message to the people of Pennsylvania – electing Republicans is more important than the will of the majority and Democrats are to

be penalized because their views are not favored by the majority in the General Assembly. By relying exclusively on a principle of maximum partisan advantage, the General Assembly's plan thus classifies and discriminates against voters solely because of their party affiliations. Plaintiffs' ability to associate with other Democratic voters to support their candidate of choice has been uniquely harmed, not by any accident of geography, but by an intentional effort to degrade a class of voters' ability to influence the political process.

39. SB 1200 also harms Democratic voters in the Commonwealth because it is, on its face and intentionally, legislation that exults Republican advantage over any legitimate criterion for governmental decisionmaking. Classifications based on political affiliation, like those based on race, are ordinarily impermissible, but the Supreme Court has indicated that such classifications may be permitted when drawing districts. In the line of cases that started with *Shaw v. Reno*, 509 U.S. 630 (1993), the Supreme Court recognized that even a factor that might otherwise be permissible can render a plan unconstitutional when used to the exclusion of all other criteria. The problem is not that the General Assembly considered politics, but that it subordinated – indeed ignored – all traditional redistricting principles and all legitimate bases for governmental decisionmaking, in order to favor those with one political viewpoint over another, thus implicating fundamental rights protected by the U.S. and Pennsylvania Constitutions. SB 1200 is so irregular on its face that it rationally can be viewed only as an effort to segregate voters to advance the interests of one political party, without regard for traditional redistricting principles and without any legitimate or compelling justification.

40. The very fact that the General Assembly has subordinated all legitimate criteria to political preference is itself a violation of the Equal Protection Clause. While politics will always plan an important role in redistricting, this was not politics as usual. The General Assembly's plan has exceeded ordinary politics, and thus requires judicial intervention. It will impose serious handicaps on Pennsylvania Democrats' efforts to participate in the political process and leaves Pennsylvania Democrats shut out of the congressional electoral process.

CLAIM I

41. Plaintiffs incorporate by reference Paragraphs 1 through 40.

42. The facts herein alleged constitute a denial or abridgement of the plaintiffs' right to vote for their Representative to the United States Congress, in violation of Section 2 of Article I of the United States Constitution, as amended by Section 2 of the Fourteenth Amendment, and Section 4, Article I of the United States Constitution.

CLAIM II

43. Plaintiffs incorporate by reference Paragraphs 1 through 42.

44. The facts herein alleged constitute a denial to the plaintiffs of the equal protection of the laws as guaranteed to them by the Equal Protection Clause of Section 1 of the Fourteenth Amendment to the United States Constitution.

CLAIM III

45. Plaintiffs incorporate by reference Paragraphs 1 through 44.

46. The facts herein alleged constitute an abridgement of the privileges and immunities of citizenship guaranteed to the plaintiffs by the Privileges or Immunities Clause of Section 1 of the Fourteenth Amendment to the United States Constitution.

CLAIM IV

47. Plaintiffs incorporate by reference Paragraphs 1 through 46.

48. The facts herein alleged constitute a denial or abridgement of the plaintiffs' right to free association as guaranteed to them by the First Amendment to the United States Constitution.

CLAIM V

49. Plaintiffs incorporate by reference Paragraphs 1 through 48.

50. The facts herein alleged constitute a violation of Section 1983 of Title 42 of the United States Code.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this Court:

A. Assume jurisdiction of this matter and convene as a three-judge District Court pursuant to Section 2284 of Title 28 of the United States Code;

B. Enter a declaratory judgment that the congressional districting plan that the General Assembly passed on January 3, 2002 violates plaintiffs' rights under the aforesaid provisions of the United States Constitution and federal law;

C. Enjoin permanently the defendants, their officers, agents, employees, attorneys, successors in office, from conducting primary or general elections, by themselves or in concert with other persons, using the January 3, 2002 General Assembly congressional districting plan or any other congressional districting plan that violates the United States Constitution or federal law;

D. Impose by Court order a new congressional redistricting plan that meets the requirements of the United States Constitution and federal law that will be in effect for the 2002 elections and enjoin the defendants from enacting or implementing a new redistricting plan until the 2004 elections;

E. Grant plaintiffs their reasonable attorneys' fees, litigation expenses, and court costs; and

F. Grant plaintiffs any other relief that the Court finds appropriate and equitable.

Respectfully submitted,

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Dated: January 11, 2002

Appendix G

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, NORMA JEAN VIETH, and SUSAN FUREY,	)	
Plaintiffs,	)	
v.	)	No.1: CV 01-2439
	)	Judge Rambo,
THE COMMONWEALTH OF PENNSYLVANIA; MARK S. SCHWEIKER, et al	)	Judge Yohn, Judge Nygaard
Defendants.	)	

DECLARATION OF ROBERT L. PRIEST

I, Robert L. Priest, declare and state as follows:

1. I am the Technical Director of the Office of Demographic Analysis for the Democratic Caucus of the Pennsylvania House of Representatives. I testified at the trial in this case.

2. I have analyzed Act 34, which was signed by the Governor on April 18, 2002, using the same techniques as those I testified to at trial.

3. South Buffalo Township has two election precincts – the Western Election District and the Eastern Election District. South Buffalo Township is one of many split municipalities in Act 34. Under the legal definition of Act 34, the Western Election District is in congressional district 3 and the Eastern Election District is in congressional district 12.

4. After the passage of Act 1, but before the passage of Act 34, the boundaries of the election districts in South Buffalo Township were modified. Press accounts indicate that this change was made with the support of two members of Congress, as well as at least one state legislator.

5. By order of the Court of Common Pleas of Armstrong County, the boundaries of the Western Election District and the Eastern Election District of South Buffalo Township were altered on March 15, 2002, by moving 4 census blocks from the Western Election District to the Eastern Election District. Those four census blocks contain 49 people.

6. Thus, District 3 in Act 34 has a population of 646,323. District 12 under Act 34 has a population of 646,420. The population deviation of Act 34 is therefore 97.

7. Act 34 splits 2 precincts, one in Boggs Township and one in Oliver Township. In each case, the precinct splits serve to connect otherwise discontiguous districts. The Boggs Township precinct is split between Districts 5 and 9 in an effort to connect a discontiguous piece of Knox Township. The Oliver Township precinct is split between Districts 9 and 17 in order to connect a piece of Newport Borough with the rest of its district. I created an exhibit that

sets forth the county, municipal, and precinct splits in Act 34 which is attached hereto as Exhibit 1.

8. Act 34 splits more counties and municipalities than Act 1. Act 34 splits 29 counties (up from 25 in Act 1) and splits 81 municipalities (up from 65 in Act 1. See Ex. 1 hereto.

9. Act 34 is also less compact on average than Act 1. I used the Autobound software package to analyze the compactness of the congressional districts created by Act 34, the same software package which I used to analyze the compactness of Act 1's districts and which I testified about at trial. The nine compactness scores for Act 34 are attached hereto as Exhibit 2.

10. One can compare Act 34 and Act 1 by calculating the percentage of population in each of Act 1's districts that are carried over into Act 34. The following are the percentage of each of Act 34's districts (by population) that derive from the corresponding districts in Act 1: District 1, 99.54%; District 2, 99.83%; District 3, 99.64%; District 4, 99.31%; District 5, 99.31%; District 6, 97.81%; District 7, 99.83%; District 8, 100.00%; District 9, 97.99%; District 10, 99.90%; District 11, 100.00%; District 12, 99.50%; District 13, 99.50%; District 14, 99.77%; District 15, 99.47%; District 16, 98.72%; District 17, 98.67%; District 18, 99.11%; District 19, 99.42%. I created an exhibit that summarizes this analysis, which is attached hereto as Exhibit 3.

11. After this Court's ruling striking down Act 1, the Pennsylvania House and Senate each passed a modified version of Act 1 with congressional districts that were

discontiguous in 4 places. Three of those discontiguous districts were corrected, but one remains in Act 34. Under Act 34, a portion of Birmingham Township in District 16 is wholly encompassed by District 7 and the State line, at no point connected to the rest of District 16. I have now reviewed Act 1 again and it suffered from the same problem.

I affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ Robert L. Priest
Robert L. Priest

April 21, 2002

Exhibit 1

HB 2545 Amendment A1462
U.S. Congressional

Split Counties (29)	County Splits (42)	1	2	3	4	5	6
	Allegheny	4	12	14	18		
	Armstrong	3	12				
	Beaver	4	18				
	Berks	6	15	16	17		
	Butler	3	4				
	Cambria	9	12				
	Chester	6	7	16			
	Clearfield	5	9				
	Crawford	3	5				
	Cumberland	9	19				
	Delaware	1	7				
	Fayette	9	12				
	Indiana	9	12				
	Juniata	5	9				
	Lackawanna	10	11				
	Lehigh	6	15				
	Luzerne	10	11				
	Lycoming	5	10				

	Mercer	3	4				
	Miffin	5	9				
	Montgomery	2	6	7	8	13	
	Perry	9	17				
	Philadelphia	1	2	8	13		15
	Somerset	9	12				
	Tioga	5	10				
	Venango	3	5				
	Warren	3	5				
	Washington	12	18				
	Westmoreland	4	9	12	18		

HB 2545 Amendment A1462
U.S. Congressional

Split
Municipalities (81) Municipal Splits (84)

County	Municipality	1	2	3	4
Allegheny	Avalon Borough	4	14		
Allegheny	East Deer Twp	4	12		
Allegheny	Etna Borough	4	14		
Allegheny	Forward Twp	12	18		
Allegheny	Neville Twp	4	14		
Allegheny	O'Hara Twp	4	14		
Allegheny	Baldwin Borough	14	18		
Allegheny	Crafton Borough	14	18		
Allegheny	Elizabeth Twp	14	18		
Allegheny	Monroeville Borough	14	18		
Allegheny	North Versailles Twp	14	18		
Allegheny	Penn Hills Twp	14	18		
Allegheny	Pitcairn Borough	14	18		
Allegheny	Robinson Twp	14	18		
Allegheny	White Oak Borough	14	18		
Allegheny	Wilkins Twp	14	18		
Armstrong	North Buffalo Twp	3	12		
Armstrong	South Buffalo Twp	3	12		

Beaver	Hanover Twp	4	18		
Berks	Bern Twp	16	17		
Berks	Earl Twp	6	17		
Berks	Hereford Twp	6	15		
Berks	Muhlenberg Twp	6	16	17	
Berks	Reading City	6	16		
Berks	South Heidelberg Twp	6	16		
Berks	Spring Twp	6	16		
Cambria	Susquehanna Twp	9	12		
Chester	East Bradford Twp	6	16		
Chester	Phoenixville Borough	6	7		
Clearfield	Beccaria Twp	5	9		
Clearfield	Boggs Twp	5	9		
Cumberland	Dickinson	9	19		
Cumberland	Middlesex Twp	9	19		
Cumberland	Southampton Twp	9	19		
Cumberland	West Pennsboro Twp	9	19		
Delaware	Darby Twp	1	7		
Delaware	Ridley Twp	1	7		
Delaware	Tinicum Twp	1	7		
Fayette	Connellsville City	9	12		
Fayette	Dunbar Twp	9	12		

Fayette	Georges Twp	9	12		
Fayette	Nicholson Twp	9	12		
Fayette	North Union Twp	9	12		
Fayette	South Union Twp	9	12		
Fayette	Springhill Twp	9	12		
Indiana	Indiana Borough	9	12		
Indiana	White Twp	9	12		
Lackawanna	Dickson City Borough	10	11		
Lackawanna	Jessup Borough	10	11		
Lackawanna	Olyphant Borough	10	11		
Lehigh	Upper Macungie	6	15		
Luzerne	Swoyersville Borough	10	11		
Mercer	Hermitage City	3	4		
Montgomery	Abington Twp	8	13		
Montgomery	Conshohocken Borough	6	7		
Montgomery	Plymouth Twp	6	13		
Montgomery	Upper Dublin Twp	8	13		
Montgomery	Upper Hanover Twp	13	15		
Montgomery	Upper Moreland Twp	8	13		
Montgomery	Whitemarsh Twp	6	13		
Montgomery	Whitpain Twp	6	13		
Perry	Newport Borough	9	17		

Perry	Oliver Twp	9	17		
Philadelphia	Philadelphia City	1	2	8	13
Washington	Canonsburg Borough	12	18		
Washington	Carroll Twp	12	18		
Washington	Charleroi Borough	12	18		
Washington	Chartiers Twp	12	18		
Washington	East Washington Borough	12	18		
Washington	Fallowfield Twp	12	18		
Washington	North Strabane Twp	12	18		
Washington	South Strabane Twp	12	18		
Westmoreland	Derry Twp	9	12		
Westmoreland	East Huntingdon Twp	12	18		
Westmoreland	Hempfield Twp	12	18		
Westmoreland	Mount Pleasant Twp	12	18		
Westmoreland	Salem Twp	12	18		
Westmoreland	Sewickley Twp	12	18		
Westmoreland	South Huntingdon Twp	12	18		
Westmoreland	Unity Twp	12	18		
Westmoreland	Washington Twp	12	18		

Precinct Splits (2)

County	Precinct	1	2		

Clearfield	Boggs Twp	5	9		
Perry	Oliver Twp	9	17		

Ward (47)

Exhibit 2

	1	2	3	4	5	6	7	8	9	Area	Perimeter	Equalarea
01	0.140	0.427	0.140	0.065	0.255	0.375	0.017	0.131	0.121	0.018	1.888	0.255
02	0.432	0.657	0.440	0.163	0.403	0.657	0.082	0.286	0.190	0.016	1.128	0.402
03	0.412	0.599	0.412	0.145	0.381	0.641	0.143	0.379	0.349	1.336	10.753	0.381
04	0.296	0.692	0.296	0.225	0.474	0.544	0.105	0.325	0.357	0.364	4.516	0.474
05	0.377	0.836	0.377	0.190	0.436	0.614	0.155	0.394	0.411	3.097	14.316	0.436
06	0.328	0.546	0.328	0.079	0.281	0.572	0.081	0.285	0.249	0.224	5.978	0.281
07	0.507	0.686	0.554	0.166	0.407	0.712	0.189	0.434	0.372	0.080	2.467	0.407
08	0.340	0.785	0.340	0.319	0.565	0.583	0.129	0.359	0.380	0.174	2.619	0.565
09	0.265	0.693	0.265	0.099	0.314	0.515	0.104	0.322	0.391	1.973	15.876	0.314
10	0.314	0.687	0.314	0.161	0.401	0.560	0.069	0.262	0.219	1.860	12.059	0.401
11	0.283	0.712	0.283	0.243	0.493	0.532	0.068	0.260	0.239	0.624	5.681	0.493
12	0.217	0.537	0.217	0.047	0.216	0.466	0.023	0.153	0.108	0.762	14.343	0.216
13	0.192	0.594	0.192	0.093	0.306	0.438	0.033	0.182	0.173	0.071	3.083	0.305
14	0.303	0.689	0.303	0.090	0.300	0.550	0.079	0.280	0.260	0.047	2.549	0.300
15	0.309	0.584	0.313	0.178	0.422	0.556	0.114	0.338	0.370	0.235	4.066	0.422
16	0.332	0.722	0.332	0.216	0.465	0.576	0.153	0.391	0.460	0.362	4.599	0.464
17	0.289	0.723	0.289	0.233	0.482	0.538	0.091	0.302	0.316	0.655	5.950	0.482
18	0.230	0.568	0.236	0.055	0.235	0.479	0.033	0.181	0.143	0.394	9.474	0.235
19	0.323	0.838	0.323	0.348	0.590	0.568	0.154	0.393	0.478	0.455	4.052	0.590

Exhibit 3

HB2545 Act 1 TOTPOP

1 1 1 1 Total	1 Total 2 Total 13 Total	643,426 1,087 1,858 646,371	99.54%
2 2 2 Total	1 Total 2 Total	1,097 645,274 646,371	99.83%
3 3 3 Total	3 Total 12 Total	644,539 1,833 646,372	99.72%
4 4 4 4 Total	3 Total 4 Total 14 Total	1,825 644,032 514 646,371	99.64%
5 5 5 5 Total	5 Total 9 Total 10 Total	641,897 3,849 625 646,371	99.31%

6 6 6 6 6 6 6 Total	6 Total 7 Total 13 Total 15 Total 16 Total 17 Total	632,208 1,121 1,240 2,181 8,207 1,414 646,371	97.81%
7 7 7 Total	6 Total 7 Total	1,113 645,259 646,372	99.83%
8 8 Total	8 Total	646,371 646,371	100.00 %
9 9 9 9 9 9 Total	5 Total 9 Total 12 Total 17 Total 19 Total	3,852 633,408 1,576 3,130 4,406 646,372	97.99%
10 10 10 Total	5 Total 10 Total	622 645,749 646,371	99.90%

11 11 Total	11 Total	646,372 646,372	100.00 %
12 12 12 12 Total	9 Total 12 Total 18 Total	1,483 640,822 4,066 646,371	99.14%
13 13 13 13 Total	1 Total 13 Total 15 Total	1,838 643,158 1,376 646,372	99.50%
14 14 14 Total	14 Total 18 Total	644,887 1,484 646,371	99.77%
15 15 15 15 Total	6 Total 15 Total 17 Total	1,771 642,938 1,662 646,371	99.47%
16 16 16 16 Total	6 Total 16 Total 17 Total	5,888 638,114 2,369 646,371	98.72%

17 17 17 17 Total	6 total 9 Total 17 Total	5,442 3,143 637,786 646,371	98.67%
18 18 18 18 18 Total	4 Total 12 Total 14 Total 18 Total	2,390 2,358 977 640,646 646,371	99.11%
19 19 19 Total	9 Total 19 Total	3,730 642,641 646,371	99.42%

APPENDIX H

U. S. Congressional Districts - Act 34

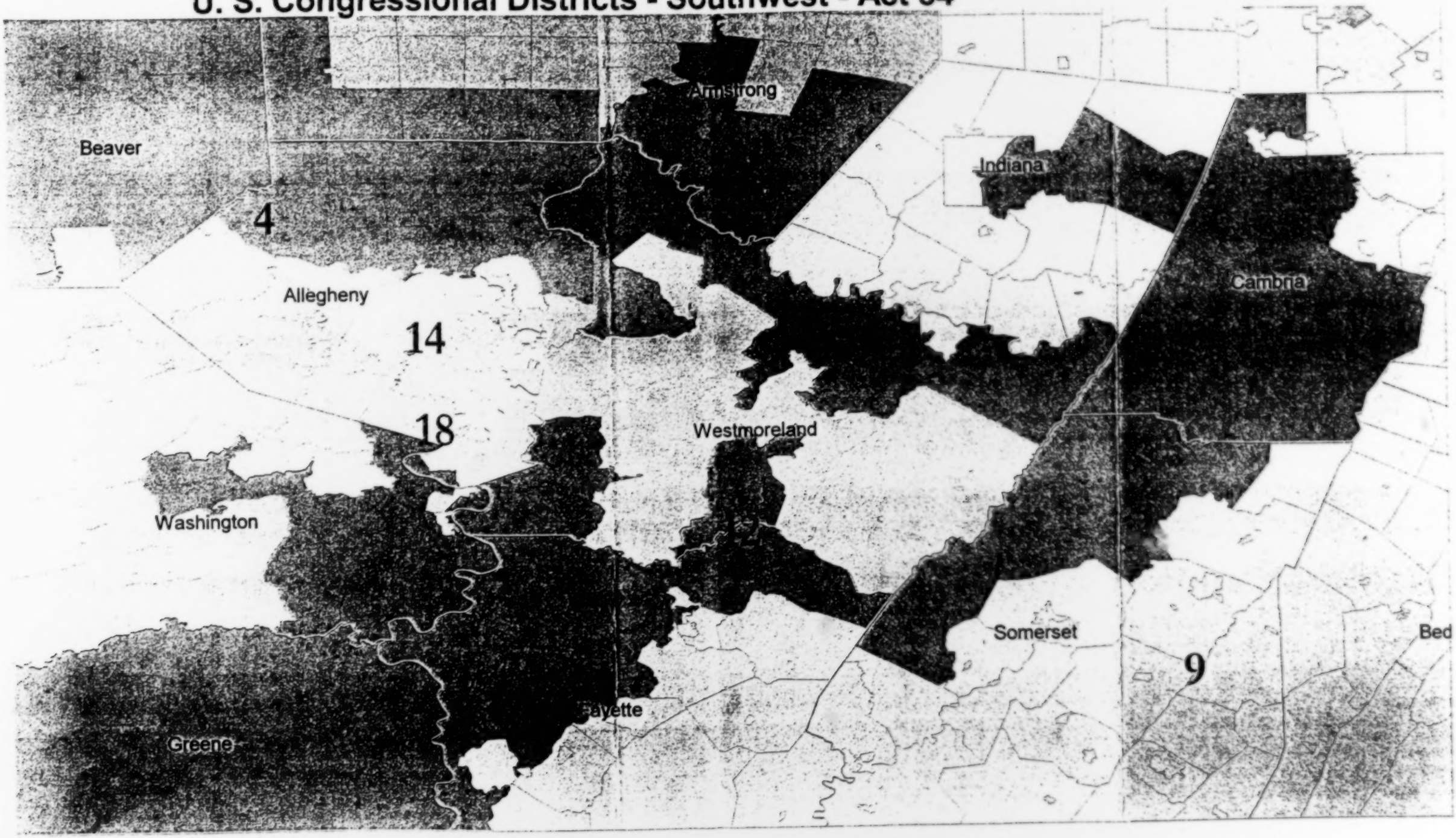
BEST AVAILABLE COPY

APPENDIX I

U. S. Congressional Districts - Southeast - Act 34
Berks
17
15
13
Montgomery
6
Chester
Philadelphia
7
Delaware
1

APPENDIX J

U. S. Congressional Districts - Southwest - Act 34



Supreme Court, U.S.
FILED
MAY 3 0 2003
OFFICE OF THE CLERK

No. 02-1580

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2002

RICHARD VIETH, et al., *Appellants,*

v.

ROBERT C. JUBELIRER AND JOHN M. PERZEL, et al., *Appellees.*

On Appeal from the United States District Court for the Middle District of Pennsylvania

---

MOTION TO AFFIRM

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MAY 30, 2003

QUESTIONS PRESENTED

1. Should a three-judge court's dismissal of a claim for partisan gerrymandering for failure to allege facts sufficient to establish the "actual discriminatory effect" required by *Davis v. Bandemer*, 478 U.S. 109 (1986), be summarily affirmed, when it is consistent with the decision in *Bandemer* and with the decisions of other three-judge courts, many of which have been summarily affirmed by this Court?

2. Is a claim that a congressional redistricting plan established by state law will elect a disproportionate number of representatives from one political party non-cognizable under U.S. CONST. art. I, §4?

3. As an alternative basis for affirmance, should this Court hold that voters who prefer the candidates of one party, in a state where voters frequently and massively engage in cross-over and split-ticket voting, cannot be considered an "identifiable political group" for purposes of asserting a partisan gerrymandering claim under *Davis v. Bandemer*, 478 U.S. 109 (1986)?

4. As an alternative basis for affirmance, should this Court reconsider and overrule its decision in *Davis v. Bandemer*, 478 U.S. 109 (1986), that a claim of partisan gerrymandering presents a justiciable political question?

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No. 02-1580

IN THE
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OCTOBER TERM 2002

RICHARD VIETH, et al., *Appellants,*

v.

ROBERT C. JUBELIRER AND JOHN M. PERZEL, et al., *Appellees.*

On Appeal from the United States District Court for the Middle District of Pennsylvania

---

MOTION TO AFFIRM

Pursuant to Supreme Court Rule 18.6, Robert C. Jubelirer, President *Pro Tempore* of the Senate of the Commonwealth of Pennsylvania and John M. Perzel, Speaker of the House of Representatives of the Commonwealth of Pennsylvania ("Presiding Officers") (Appellees herein and Defendants below[1]), move to affirm the order below because the questions presented by Appellants for review are so insubstantial as to require no further briefing or oral argument and because alternative bases for affirmance exist.

---

[1] Representative John M. Perzel was elected Speaker after the death of Matthew J. Ryan and was substituted as a Defendant in this matter by order of the three-judge court below dated April 17, 2003.

STATEMENT OF THE CASE

A. Facts Relevant to this Motion

As a result of reapportionment following the 2000 Census, the Commonwealth of Pennsylvania lost two seats in U.S. House of Representatives (from 21 to 19).

Based on the now-official voter registration data for Nov. 2001, there were 3,733,739 registered Democrats; 3,233,171 registered Republicans; 3,266 registered Green party members and 803,365 other registered voters in Pennsylvania. Am. Com. ¶25; App. at 137a; *see* Official Voter Registration Data Nov. 2001, PA Dept. of State www.dos.state.pa.us/bcel/cwp/view.asp?a=1099&q=431588. Using these data, Democrats account for 48%, Republicans account for 41.6% and others account for 10.4% of the registered voters. No party has a majority.

In the 2000 general election, 11 Republicans and 10 Democrats were elected to Congress. Am. Com. ¶15; App. at 132-33a. In the five statewide elections held in 2000, Republicans won 3 races (U.S. Senator, Attorney General and State Treasurer) and Democrats won 2 races (President and Auditor General). Am. Com. ¶27; App. at 138a.[2]

The Democrat party is not a minor party in the Commonwealth. *See* Am. Com. ¶25; App. at 137a. Registered Democrat voters do not vote in a cohesive manner; rather, they engage in much cross-over and split-ticket voting. *See* Am. Com. ¶25 (disregarding voters registered with minor parties or as non-affiliated, Democrats have a 53.6% to 46.4% advantage as between registered Democrat and Republican voters); App. at 137a.

---

[2] Other than for President, Plaintiffs allege the vote percentage won by Republican and Democrat candidates based only on the totals for those two parties' candidates: U.S. Senator (53.5%R, 46.5%D); Attorney General (55.6%R, 44.4%D); Auditor General (41.3%R, 58.7%D); State Treasurer (51.1%R, 48.9%D), excluding votes for other candidates. Am. Com. ¶27; App. at 137-183a.

In five statewide races in 2000, only the Democrat candidate for Auditor General received at least 53.6% of the vote. In the other four races, the largest percentage of Democrat votes (50.6%) was received by the Democrat candidate for President, while Democrat candidates for Attorney General, State Treasurer, and United States Senator all received less than 50% of the total votes cast for either a Democrat or Republican. *See* Am. Com. ¶27; App. at 137-138a. As these data reveal, registered Democrats frequently and massively vote for Republican candidates; they are not a cohesive group.[3]

B. Procedural History and Decisions Below

On January 7, 2002, a new state law, Act 2002-1 ("Act 1"), established district boundaries for the Commonwealth's 19 congressional seats. On January 11, 2002, Plaintiffs, Richard & Norma Jean Vieth and Susan Furey, filed a five-count amended complaint for declaratory and injunctive relief in the United States District Court for the Middle District of Pennsylvania, challenging the constitutionality of Act 1. App. at 128a. A three-judge court was convened pursuant to 28 U.S.C. §2284(a), and Presiding Officers and Executive Officers[4] each filed motions to dismiss the complaint pursuant to Fed.R.Civ.P. 12(b)(1) & (6). On February 22, 2003, the

---

[3] This trend continued in 2001 when Republicans won all seven statewide elections. The Republican candidate for Supreme Court received 52.7% of all votes cast; the three Republican candidates for Superior Court received 55% of all votes cast; and the three Republican candidates for Commonwealth Court received 57% of all votes cast. *See* Official 2001 Municipal Election Results (Supreme, Superior and Commonwealth Courts), PA Dept. of State (http://web.dos.state.pa.us/elections/elec_results/dsf/elec_menu.cgi?eyear=2001&etype=M).

[4] Executive Officers were the other named defendants below (i.e., then-Governor of Pennsylvania Mark Schweiker, then-Secretary of the Commonwealth Kim Pizzingrilli and then-Commissioner of the Bureau of Commissions, Elections and Legislation Richard Filling).

three-judge court issued an opinion and order dismissing four counts, including the partisan gerrymandering claim, for failure to state a claim. *Vieth v. Commonwealth of Pennsylvania*, 188 F.Supp.2d 532 (M.D. Pa. 2002) ("*Vieth I*"); App. at 13a.[5]

After a hearing on the sole remaining count (alleged violation of the one-person, one-vote principle), the three-judge court, on April 8, 2002, declared Act 1 unconstitutional, enjoined its implementation, and directed the Pennsylvania General Assembly to "within three weeks of the date of this order, prepare, enact and submit for review and final approval by this Court, a congressional redistricting plan in conformity with this opinion." *Vieth v. Commonwealth of Pennsylvania*, 195 F. Supp.2d 672, 679 (M.D. Pa. 2002) ("*Vieth II*"); App. at 46a, 57a.[6]

On April 17, 2002, the General Assembly passed a bill containing a revised congressional redistricting plan, which, on April 18, 2002, the Governor signed into law as Act No. 2002-34 ("Act 34"). Act 34 repeals Act 1 and puts in place a revised congressional redistricting plan for Pennsylvania. Act 1 was used for the 2002 congressional election cycle but is superseded by Act 34 for the 2004 and future congressional elections.[7]

---

[5] Plaintiffs appealed from this order (No. 01-1873), challenging the dismissal of the partisan gerrymandering claim; Presiding Officers filed a Motion to Dismiss or Affirm, and a conditional cross-appeal (No. 02-135), raising the two issues now raised as alternative bases for affirmance. Both appeals were dismissed as moot on October 7, 2002. *Vieth v. Jubelirer*, 123 S. Ct. 68 (2002); *Jubelirer v. Vieth*, 123 S. Ct. 68 (2002).

[6] Presiding Officers and Executive Officers appealed from this order (Nos. 01-1817 and 01-1823), which appeals were dismissed as moot on October 7, 2002. *Jubelirer v. Vieth*, 123 S. Ct. 67 (2002); *Schweiker v. Vieth*, 123 S. Ct. 68 (2002).

[7] On April 23, 2002, the three-judge court stayed the injunction imposed by the April 8, 2002 order and permitted Act 1 to govern the 2002 congressional elections.

On April 22, 2002, Plaintiffs filed a motion requesting the three-judge court to begin remedial proceedings. In the motion, Plaintiffs attacked the constitutionality of Act 34, purporting, *inter alia*, to "renew" their partisan gerrymandering claim. Plaintiffs asked the three-judge court to either impose one of Plaintiffs' alternative maps as a remedial plan or draw its own. Presiding Officers opposed the motion.

1. The order appealed from

On January 24, 2003, the three-judge court denied Plaintiffs' motion and entered judgment for Defendants, upholding the constitutionality of Act 34. *Vieth v. Commonwealth of Pennsylvania*, 241 F. Supp.2d 478 (M.D. Pa. 2003)("*Vieth III*"); App. at 1a. With regard to the partisan gerrymandering claim, the court stated:

> Plaintiffs presented the same argument with respect to Act 1. In Vieth I, the court dismissed this claim because 'Plaintiffs [did not] allege facts indicating that they have been shut out of the political process and, therefore, they cannot establish an actual discriminatory effect on them,' as required by Davis v. Bandemer. Act 34 is essentially the same redistricting plan as Act 1, except for the fact that Act 34 does not possess an avoidable population deviation. Accordingly, whatever partisan effect Act 1 had, Act 34 will have as well. The court, therefore, *incorporates by reference its discussion in Vieth I regarding partisan gerrymandering* and holds that the undisputed facts in this case are insufficient to establish such a claim.

Vieth III, 241 F. Supp.2d at 484-485, App. at 11a-12a (internal citations omitted, brackets in the original, emphasis added).

2. The incorporated opinion and order

In addressing the motion to dismiss in *Vieth I* (i.e., the opinion incorporated into *Vieth III*), the three-judge court first set forth the three-prong *Bandemer* analysis: a

plaintiff must "'prove both [1] intentional discrimination against an [2] identifiable political group and an [3] actual discriminatory effect on that group.'" *Vieth I*, 188 F. Supp.2d at 543 (quoting 478 U.S. at 127); App. at 32a.

The court ruled against Defendants on the first two prongs of the *Bandemer* analysis (i.e., discriminatory intent and "identifiable political group"), and, with respect to "identifiable political group," stated:

> Defendants contend that Plaintiffs have failed to allege facts demonstrating that Democrats in Pennsylvania vote as a block. However, Defendants do not point to any authority which would require such an allegation. The court has scoured the *Bandemer* decision and has found no such requirement. Instead, the court finds that *Bandemer* indicates that Plaintiffs must allege only that they are members of an identifiable political group whose geographical distribution is sufficiently ascertainable that it could have been used in drawing electoral district lines. Clearly, by alleging that they are Pennsylvania citizens who vote for Democrats, Plaintiffs have satisfied this requirement.

188 F. Supp.2d at 543-44; App. at 32a.

The partisan gerrymandering claim was ultimately dismissed for failure to plead an "actual discriminatory effect" to satisfy the third *Bandemer* prong. The three-judge court began its analysis by noting that while *Bandemer* "offers little concrete guidance" as to the third prong, the result in that case, understood in terms of the evidence presented, could be drawn upon for aid. *Vieth I*, 188 F. Supp.2d at 544; App. at 33-34a. The court also examined the decision in *Badham v. Eu*, 694 F. Supp. 664 (N.D. Cal. 1988), *aff'd*, 488 U.S. 1024 (1989), pointing out that it had been summarily affirmed by this Court. 188 F. Supp.2d at 454 n.12; App. at 34-36a. Then, drawing on both its understanding of *Bandemer* and the analysis in *Badham*, the court summarized the allegations before it:

> In this case, Plaintiffs' allegations amount to this: Act 1 [and by extension Act 34] is rigged to guarantee that thirteen of Pennsylvania's nineteen congressional representatives will be Republicans. As a result, Democrats will have a more difficult time electing their candidates. Due to this impediment, 'the Democratic Party will have greater difficulty in fielding competitive candidates.' Thus, Act 1 [and by extension Act 34] operates 'to essentially shut Democrats and Democratic voters out of the political process.' Plaintiffs, in particular, 'will suffer harm ... [because they] will now be increasingly represented by members of Congress who do not represent their views.'

188 F. Supp.2d at 546; App. at 36-37a (internal citations omitted; brackets original). The court then rejected these allegations as insufficient to allege discriminatory effects under *Bandemer*.

First, the court characterized the allegations as amounting to nothing more than a plea for proportional representation which "*Bandemer* soundly rejected [as] a basis for an equal protection violation." 188 F. Supp.2d at 546; App. at 37a. Second, since *Bandemer* had explicitly rejected the assumption that those who vote for a losing candidate will not be adequately represented by the winning candidate, Plaintiffs' allegation that, as Democrats, they will be represented in Congress by Republicans who do not share their views, was irrelevant. *Id.* Third, focusing on the relevant group – i.e., Pennsylvania Democrat voters, *not* the Democrat party – the court explained: "Stripped to its bones, Plaintiffs' allegations, in this respect, amount to a claim that Act 1 [and by extension Act 34] will make it more difficult for them to elect Democratic candidates to Congress. However, this simply is not the end-all be-all constitutional analysis that Plaintiffs make it out to be." *Id.*; App. at 38a. For support, the court quoted the following passage from the *Bandemer* plurality opinion:

> '[T]he mere fact that a particular apportionment scheme makes it more difficult for a particular group in a particular district to elect representatives of its choice does not render the scheme constitutionally infirm. This conviction, in turn, stems from a perception that the power to influence the political process is not limited to winning elections. ... Thus, a group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that makes winning elections more difficult, and a failure of proportional representation alone does not constitute impermissible discrimination under the Equal Protection Clause.'

188 F. Supp.2d at 546-47 (quoting *Bandemer*, 478 U.S. at 131-132) (ellipsis in the original); App. at 38a.

Finally, the court noted that Plaintiffs' allegations failed to support their conclusory argument that Act 1 [and by extension Act 34] "'essentially shuts ... Democratic voters out of the political process'" as "there are no allegations that anyone has ever prevented, or will prevent, Plaintiffs from: registering to vote; organizing with other like-minded voters; raising funds on behalf of candidates; voting; campaigning; or speaking out on matters of public concern." *Id.* at 547; App. at 38-39a.[8]

---

[8] In their Jurisdictional Statement, Appellants state that the results of the November 2002 general election "confirmed the extreme partisan bias of Act 1 (and by extension Act 34)." J.S. at 10. Those results, however, confirm why Appellants could not have shown discriminatory effect under *Bandemer*. First, Republicans won only 12 congressional seats and not the 13 or 14 Appellants had predicted. Second, the 2002 Democrat candidate for Governor of Pennsylvania (Ed Rendell) won by approximately 320,000 more votes than his Republican challenger and got 53.4% of the total votes cast, including those cast for the Green and Libertarian party candidates. *See* Official 2002 General Elections Results (Governor), PA Dept. of State (http://web.dos.state.pa.us/elections/elec_results/dsf/statewide1.cgi?choice=Gov&eyear=2002&etype=G). During his bid for the governorship, Rendell shattered the state record for campaign fund-raising. John Sullivan & Mario F. Cattabiani, "Rendell's Old Foes Become Donors," THE PHILADELPHIA INQUIRER (February 1, 2003) at A01 ("During his run for governor, Rendell amassed a war chest of $42 million, nearly three times the state record for campaign fund-raising."). The reality is that Democrat voters are able to and do influence the political process in Pennsylvania. *See Bandemer*, 478 U.S. at 132; *see also O'Lear v. Miller*, 222 F. Supp.2d 850, 856 (E.D. Mich. 2002), *aff'd*, 123 S. Ct. 512 (2002) (reasoning that a disfavored party's chance of "doing better" in the next reapportionment is affected by that party's hold on other state offices such as the governorship).

ARGUMENT

I. INSUBSTANTIAL QUESTIONS PRESENTED

The Court should summarily affirm the order in *Vieth III* dismissing the partisan gerrymandering challenge to Act 34 for failure to state a claim.

A. "Discriminatory Effects"

In *Bandemer*, a plurality of this Court set forth the standard for assessing claims of unconstitutional partisan gerrymandering under the Fourteenth Amendment. To state a claim, a plaintiff must allege "both intentional discrimination against an identifiable political group and an actual discriminatory effect on that group." 478 U.S. at 127 (citing *Mobile v. Bolden*, 446 U.S. 55, 67-68 (1980)). Unlawful discrimination occurs in this context "only when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political system as a whole." 478 U.S. at 132. A "mere lack of proportional representation will not be sufficient to prove unconstitutional discrimination" because an equal protection violation occurs only where "a history of disproportionate results appear[s] in conjunction with strong indicia of lack of political power and the denial of fair representation." *Id.* at 132, 139. This "indicia" requirement was patterned on challenges brought by racial groups to individual multi-member districts, where the

racial minorities had "essentially been shut out of the political process." *See id.* at 139.

Appellants' partisan gerrymandering claim against Act 1, and by extension Act 34, faltered under a straightforward application of the strict *Bandemer* "discriminatory effects" test, not from some "construction of *Bandemer* that [] essentially overrule[d] it." *See* J.S. at 17. The fact that partisan gerrymandering claims typically rise or fall on the "discriminatory effects" prong of the analysis *is by design* and derives from the standard set forth by the *Bandemer* plurality itself, and not, as Appellants posit, from some extreme misinterpretation of that standard crafted and followed by the lower courts. The *Bandemer* plurality recognized partisan gerrymandering claims as justiciable but purposefully established a difficult standard.

It is evident throughout the *Bandemer* plurality opinion that the requisites for a cause of action for partisan gerrymandering were intended to be stringent. Stressing that neither the Constitution nor prior precedent of the Court requires proportional representation of political parties in Congress, the *Bandemer* plurality explained (in language specifically quoted, in part, by the three-judge court below, 188 F. Supp.2d at 546-547; App. at 38a), that:

> the mere fact that a particular apportionment scheme makes it more difficult for a particular group in a particular district to elect the representatives of its choice does not render that scheme constitutionally infirm. This conviction, in turn, stems from a perception that the power to influence the political process is not limited to winning elections. An individual or a group of individuals who votes for a losing candidate is usually deemed to be adequately represented by the winning candidate and to have as much opportunity to influence that candidate as other voters in the district ... . Thus, a group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that makes winning elections more difficult, and a failure of

> proportional representation alone does not constitute impermissible discrimination under the Equal Protection Clause.

478 U.S. at 131-32 (citing *Mobile*, 446 U.S. at 111 & n.7). The *Bandemer* plurality was unwilling to presume that "those who are elected will disregard the disproportionately underrepresented group." *Id.* at 132. It explained that "unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole." *Id.*

The *Bandemer* plurality both distinguished and analogized between vote dilution in an individual district and statewide, again summarizing the principles that would guide its analysis:

> [A]s in individual district cases, an equal protection violation may be found only where the electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively. In this context, such a finding of unconstitutionality must be supported by evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.

Id. at 133. The plurality was particularly leery of setting the threshold for a partisan gerrymandering claim too low.

> Inviting attack on minor departures from some supposed norm would too much embroil the judiciary in second-guessing what has consistently been referred to as a political task for the legislature, a task that should not be monitored too closely unless the express or tacit goal is to effect its removal from legislative halls. We decline to take a major step towards that end, which would be so much at odds with our history and experience.

Id. at 133-34.

The *Bandemer* plurality recognized the difficulties inherent in the standard they had set: "Determining when an electoral system has been 'arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole' *is of necessity a difficult inquiry*." *Id.* at 143 (internal citations omitted; emphasis added). Thus, it is evident that the *Bandemer* plurality intended that the requisite discriminatory effects would to be difficult to show.

Appellants propose a different standard than every court that has ever applied *Bandemer* and one without grounding in *Bandemer* itself. They suggest that unless "redistricting [] achieve[s] a 'level of parity between votes and representation sufficient to ensure ... that majorities are not consigned to minority status,'" illegitimate partisan gerrymandering has occurred. *See* J.S. at 15 (quoting *Bandemer*, 478 U.S. at 125 n.9); *see also id.* at 17 (suggesting that *Bandemer* clearly indicates that "a State may violate the Equal Protection Clause when it consigns a political majority to minority status"), *id.* at 22 ("under *Bandemer*, a State violates the Equal Protection Clause when, as here, it consigns a political party to roughly one-third or less of the congressional seats, even if that party consistently wins a majority of the popular vote statewide").

Appellants' "consigning" argument appears to spring from Justice O'Connor's criticism in *Bandemer* that, in finding partisan gerrymandering justiciable, the plurality made an illegitimate policy determination to favor proportional representation. *See* 478 U.S. at 125, n.9. However, it does not appear anywhere in the plurality's discussion of the elements of a partisan gerrymandering claim. Appellants are attempting to merge the plurality decision in *Bandemer* with Justice O'Connor's critical characterization of that decision, so as to cobble together a purported majority view.

Appellants are seeking to transform a rationale for justiciability into a standard of proof in order to ease their burden to state a partisan gerrymandering claim. But as

every three-judge court addressing the issue has recognized, the *Bandemer* plurality established a standard that would be most difficult to meet. The impact of that standard on the ability of voters affiliated with major political parties to state a claim for partisan gerrymandering is a function of the standard itself and does not derive from an improper interpretation of *Bandemer*.

Accordingly, the three-judge court below did not err in its choice of standard or in its application of that standard to the amended complaint. The court's analysis is consistent with that of numerous other three-judge courts that have dismissed partisan gerrymandering claims for lack of allegations sufficient to meet the discriminatory effects prong of the *Bandemer* standard, many of which have been summarily affirmed by this Court on direct appeal. *See e.g., O'Lear v. Miller*, 222 F. Supp.2d 850 (E.D. Mich.), *aff'd*, 123 S. Ct. 512 (2002) (motion to dismiss); *Badham v. Eu*, 694 F. Supp. 664 (N.D. Cal. 1988), *aff'd*, 488 U.S. 1024 (1989) (motion to dismiss); *Pope v. Blue*, 809 F. Supp. 392 (W.D.N.C. 1992), *aff'd*, 506 U.S. 801 (1992) (motion to dismiss); *Holloway v. Hechler*, 817 F. Supp. 617 (S.D. W.Va. 1992), *aff'd*, 507 U.S. 956 (1993) (motion to dismiss); *Marylanders for Fair Representation v. Schaefer*, 849 F. Supp. 1022 (D. Md. 1994) (defendants' motion for summary judgment); *White v. Alabama*, 867 F. Supp. 1571 (M.D. Ala. 1994) (defendants' motion for summary judgment). *See also Martinez v. Bush*, 234 F.Supp.2d 1275 (S.D. Fla. 2002) (partisan gerrymandering claim dismissed after trial).[9]

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[9] Appellants attempt to distinguish this case by characterizing Acts 1 and 34 as exhibiting an extreme level of partisan bias against Democrat voters. *See* J.S. at 18 & n. 7. They compare Acts 1 and 34 to maps in Michigan and Florida, without acknowledging that those maps (which were challenged as having been drawn to produce a 10/5 and 18/7 advantage for Republicans) have been upheld against partisan gerrymandering challenges. *See O'Lear*, 22 F. Supp.2d 850 (E.D. Mich. 2002), *aff'd*, 123 S. Ct. 512 (2002); *Martinez*, 234 F.Supp.2d 1275 (S.D. Fla. 2002). Appellants also fail to acknowledge that the congressional redistricting map in Georgia, where Democrat

Contrary to Appellants' assertion that confusion reigns among the lower courts and that the time has come for this Court to reassess *Bandemer* and declare it no paper tiger, it appears that the lower courts, including the three-judge court in this case, understand well the height of the barrier to partisan gerrymandering claims. The order below should be summarily affirmed.

B. Racial Gerrymandering Decisions

Appellants contend that Act 34 is unconstitutional under the principles announced in two cases decided in the racial discrimination context - *Shaw v. Reno*, 509 U.S. 630 (1993), and *Miller v. Johnson*, 515 U.S. 900 (1995). J.S. at 22-25a. They ask the Court, having held in *Shaw* and *Miller* that redistricting using the consideration of *race* to the exclusion of other traditionally-neutral districting principles was unconstitutional, to "take the next step and recognize that equally irregular districts drawn predominantly on the basis of voters' political viewpoint are also constitutionally suspect." J.S. at 25. This invitation was rejected by the three-judge court in *O'Lear* in an opinion summarily affirmed by this Court. 222 F. Supp. at 858 n.5 ("We find no support in either [*Shaw* or *Miller*] for th[e] proposition" that "mere failure to use politically neutral principles itself violates the Equal Protection Clause"), *aff'd*, 123 S. Ct. 512 (2002), and in *Martinez*, 234 F.Supp.2d at 1348 n.99.

The three-judge court below was absolutely correct in not relying on *Shaw* or *Miller* to interpret *Bandemer* or to recognize a theory of partisan gerrymandering independent of *Bandemer*. The concepts applicable to partisan gerrymandering and racial gerrymandering are not interchangeable. While the plurality in *Bandemer* did derive its standard for a *prima facie* showing of partisan gerrymandering from the Court's racial gerrymandering

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lawmakers constituted the majority of the state legislators, has also been challenged as a partisan gerrymander. *Larios v. Perdue*, No. 1:03-CV-0693 (N.D. Ga.) (complaint filed March 13, 2003).

decisions, the partisan gerrymandering showing, as the plurality stressed, is different from that applied to other equal protection claims, including allegations of racial gerrymandering. *See Bandemer*, 478 U.S. at 134 n.14 ("The requirement of a threshold showing is derived from the peculiar characteristics of these political gerrymandering claims. We do not contemplate that a similar requirement would apply to our Equal Protection cases outside of this particular context.").

To establish a *prima facie* showing of racial gerrymandering in a redistricting context, a plaintiff must show that:

> race was the *predominant* factor motivating the legislature's decision to place a significant number of voters within or without a particular district. To make this showing, a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, to racial considerations. Where these or other race-neutral considerations are the basis for redistricting legislation, and are not subordinated to race, a State 'can defeat a claim that a district has been gerrymandered on racial lines.'

Miller, 515 U.S. at 916 (quoting *Shaw*, 509 U.S. at 647) (emphasis added). This is a very different showing than that required under *Bandemer*. *See* 478 U.S. at 127 (plaintiff must allege "both intentional discrimination against an identifiable political group and an actual discriminatory effect on that group").

Importantly, in *Hunt v. Cromartie*, 526 U.S. 541, 551 (1999), this Court deemed "constitutional political gerrymandering" (i.e., that which is not invalid under *Bandemer*) to be a "traditional race-neutral principle." *See also Easley v. Cromartie*, 532 U.S. 234 (2001) (concluding that "politics" and not race was the predominant reason for how the challenged district was drawn). In *Hunt*, this

Court concluded that summary judgment for those challenging the plan was improper because there was a material question of fact whether the legislature's predominant intent in drawing the challenged district was political or racial. In neither *Hunt* nor *Easley* did this Court provide an exclusive list of what constitutes permissible "political" intent. Among the political items asserted by the plan's defenders were "the intent to make [the challenged district] a strong Democratic district" and "protect[ing] incumbents." *Hunt*, 526 U.S. at 549. In other words, it can be legitimate for politics to be a predominant reason for drawing districts, but it is never legitimate for race to be so.

Another difference between racial and partisan gerrymandering is the level of scrutiny applied. For racial gerrymandering claims, once it is shown that race was the predominant reason for drawing a district, a *prima facie* showing has been made and the burden shifts to the plan's proponent to identify a compelling state interest to justify the use of race, i.e., strict scrutiny applies. *Miller*, 515 U.S. at 920. Strict scrutiny is used because race-based classifications are suspect. *See Shaw*, 509 U.S. at 642 ("racial classifications are immediately suspect"). Partisan gerrymandering is different. Classification on the basis of major political party, party registration, or voter performance is not suspect and is not, in and of itself, unconstitutional. Political gerrymandering is not subject to strict scrutiny. *See Bush v. Vera*, 517 U.S. 952, 964 (1996) ("We have not subjected political gerrymandering to strict scrutiny."). In other words, only a rational basis need exist to support partisan gerrymandering. As this Court explained in *Shaw*:

> This Court has held political gerrymanders to be justiciable under the Equal Protection Clause. *But nothing in our case law compels the conclusion that racial and political gerrymanders are subject to precisely the same constitutional scrutiny.* In fact, our country's long and persistent history of racial discrimination in voting – as well as our Fourteenth Amendment jurisprudence, which always has

> reserved the strictest scrutiny for discrimination on the basis of race – would seem to compel the opposite conclusion.

509 U.S. at 650 (citations omitted; emphasis added).

The use of strict scrutiny every time partisan affiliation was used as a factor – even as the predominant reason – for drawing district lines, would create monumental problems. As the *Bandemer* plurality explained:

> [W]e [] reject the District Court's apparent holding that *any* interference with an opportunity to elect a representative of one's choice would be sufficient to allege or make out an equal protection violation, unless justified by some acceptable state interest that the State would be required to demonstrate. In addition to being contrary to the above-described conception of an unconstitutional political gerrymander, such a low threshold for legal action would invite attack on all or almost all reapportionment statutes. District-based elections hardly ever produce a perfect fit between votes and representation. The one person, one vote imperative often mandates departure from this result ... .

478 U.S. at 133 (emphasis in the original).

In addition to these notable differences between the analyses for racial and partisan gerrymandering, the theory that Appellants would pull from the *Shaw* line of cases for application here – i.e., that a state legislature cannot redistrict in a fashion that subordinates all "traditional redistricting criteria" to achieve a certain partisan ends – was rejected by the *Bandemer* plurality. In responding to Justice Powell's suggested standard for identifying an unconstitutional partisan gerrymander, the plurality stated:

> [T]he crux of Justice Powell's analysis seems to be that – at least in some cases – the intentional drawing of district boundaries for partisan ends and for no other reason violates the Equal Protection

> Clause in and of itself. We disagree, however, with this conception of a constitutional violation. Specifically, even if a state legislature redistricts with the specific intention of disadvantaging one political party's election prospects, we do not believe that there has been an unconstitutional discrimination against members of that party unless the redistricting does in fact disadvantage it at the polls.

478 U.S. at 138-139. The *Shaw* line of cases offers no guidance on the interpretation and application of *Bandemer*. Nor should these cases be read to support an independent theory of partisan gerrymandering under the Fourteenth Amendment.

C. U.S. CONST. art. I, §4

Appellants urge the Court to use this case to announce that U.S. CONST. art. I, §4 – independent of the Fourteenth Amendment – operates to forbid partisan gerrymandering.[10] They argue that "Article I strictly

[10] Appellants state that, in granting the motion to dismiss the "political gerrymandering claims," the three-judge court "examined those claims entirely within the framework ... in [] *Bandemer*, never acknowledging (despite a motion for reconsideration) Appellants' separate Article I arguments." J.S. at 6 (emphasis added). This recitation of events is misleading. *Vieth I*, which dismissed Claim II (partisan gerrymandering under the Fourteenth Amendment), left pending Claim I (one-person, one-vote). Plaintiffs filed a Motion for Clarification and/or Reconsideration, asking whether, by not dismissing Claim I, the three-judge court had left pending the partisan gerrymandering claim based on Article I (said to be encompassed within Claim I). Presiding Officers responded, *inter alia*, that because Plaintiffs had argued, in response to the motions to dismiss, that Article I operates as an independent restriction on partisan gerrymandering and because the court, in addressing Claim I, cited only the standard for resolving one-person, one-vote claims, Plaintiffs' Article I theory had been implicitly rejected. Plaintiffs' motion for reconsideration was denied. Notably, in "renewing" their partisan gerrymandering challenge to Act 34, Plaintiffs did not refer to Article I.

constrains the political faction that happens to control the state legislature at the right moment in the decennial redistricting cycle from dictating the composition of Pennsylvania's congressional delegation." J.S. at 29. Quoting from the dissent in *Anne Arundel County Republican Cent. Comm. v. State Admin. Bd. of Election Laws*, 781 F.Supp. 394, 402-03 (D. Md. 1991)(Niemeyer, J., dissenting), *aff'd*, 504 U.S. 938 (1992), Appellants argue that "[u]nder Article I, 'the State may not attempt to dictate the outcome of congressional elections' by drawing congressional districts that confer a substantial advantage on one political party." J.S. at 29. This argument was rejected by the three-judge court in *O'Lear*, 222 F.Supp.2d at 859, in an opinion summarily affirmed by this Court.

Plaintiffs, who fail to acknowledge this part of the *O'Lear* decision, support the asserted U.S. CONST. art I, §4 prohibition by interpreting decisions of this Court – decided in markedly different contexts – to stand for a general principle that "Article I forbids States from using their Elections Clause authority to thwart the will of the majority of voters ... ." J.S. at 25-26. U.S. CONST. art. I, §4, however, has never been used as an independent basis for invalidating congressional redistricting legislation as a political gerrymander and the cases relied on by Appellants offer no reason for it to be so used. *See U. S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995) (invalidating state constitutional amendment prohibiting the name of an otherwise eligible candidate for Congress from appearing on the general election ballot if that candidate has already served set number of terms); *Cook v. Gralike*, 531 U.S. 510 (2001) (invalidating state constitutional amendment providing that candidates for Congress who failed to support an attempt to amend the U.S. Constitution to include term limits would be noted as having so failed on the ballot).

U.S. CONST. art. I, §4 is an express grant of authority to state legislatures and to Congress to regulate the time, place and manner of congressional elections. *See Smiley v. Holm*, 285 U.S. 355, 366 (1932) (the words of art. I, §4 "embrace authority to provide a complete code for

congressional elections"); *Oregon v. Mitchell*, 400 U.S. 112, 119 (1970) ("In the very beginning the responsibility of the States for setting the qualifications of voters in congressional elections was made subject to the power of Congress to make or alter such regulations if it deemed it advisable to do so.").[11] While this Court has stated that U.S. CONST. art. I, §4 cannot be used to "immunize state congressional reapportionment laws which debase a citizen's right to vote from the power of courts to protect the constitutional rights of individuals from legislative destruction," *Wesberry v. Sanders*, 376 U.S. 1, 6 (1964), it has never recognized the provision as providing an independent, private cause of action for partisan gerrymandering in the context of redistricting by an affected individual. State legislatures or Congress, to which the regulation of the manner of holding elections is delegated, might have authority to impose such a restriction by statute, but, with respect to Appellants' attempted application of the restriction, U.S. CONST. art. I, §4 cannot be used to vindicate private interests.

Appellants' argument under U.S. CONST. art. I, §4 is essentially another plea for proportionality. A requirement of proportionality has been roundly rejected in the redistricting context. For example, as the plurality stressed in *Bandemer*, "a group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that makes winning elections more difficult, and a failure of proportional representation alone does not constitute impermissible discrimination..." 478 U.S. at 132. As Justice O'Conner pointed out, such a requirement is inconsistent with the concept of electing representatives by districts:

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[11] As Justice Black noted in *Oregon*, U.S. CONST. art. I, §4 "was a compromise between those delegates to the Constitutional Convention who wanted the States to have final authority over the election of all state and federal officers and those who wanted Congress to make laws governing national elections." 400 U.S. at 119 n.2 (citing 2 J. Story, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES, 280-292 (1st ed. 1833)).

> Districting itself represents a middle ground between winner-take-all statewide elections and proportional representation for political parties. If there is a constitutional preference for proportionality, the legitimacy of districting itself is called into question: the voting strength of less evenly distributed groups will be invariably diminished by districting as compared to at-large proportional systems for electing representatives. Moreover, one implication of the districting system is that voters cast votes for candidates in their districts, not for a statewide slate of legislative candidates put forward by the parties. Consequently, efforts to determine party voting strength presuppose a norm that does not exist – statewide elections for representatives along party lines.

478 U.S. at 159.[12]

Appellants offer no principled basis for constitutionalizing proportionality and thereby avoiding the difficult challenge of establishing the discriminatory effects requirement of *Bandemer* for unconstitutional partisan gerrymandering. The question they present regarding U.S. CONST. art. I, §4 is not substantial and offers no basis for this Court to do other than summarily affirm the dismissal.

II. ALTERNATIVE BASES FOR AFFIRMANCE

As a prevailing party, Presiding Officers may defend the judgment on any ground properly raised below whether or not relied upon, rejected, or even considered by the three-judge court. *See e.g., Washington v. Yakima*

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[12] Appellants attempted precisely what Justice O'Connor cautioned against. The Amended Complaint pleaded facts about statewide races to support the partisan gerrymandering claim. Ironically, the facts pleaded undercut the argument. E.g., in 2000, Democrat candidates won only 2 out of 5 statewide races. *See supra* n. 2 & 3.

Indian Nation, 439 U.S. 463, 476 n.20 (1979); *Fusari v. Steinberg*, 419 U.S. 379, 387 n.13 (1975).

A. "Identifiable Political Group"

In *Vieth I*, as incorporated into *Vieth III*, the three-judge court ruled that Plaintiffs had alleged an "identifiable political group" as required by *Bandemer*. The Court could affirm the order below on the alternative basis that this conclusion was wrong as a matter of law.

The *Bandemer* plurality, despite setting forth the requirement that a plaintiff allege and prove the existence of an "identifiable political group," did not address whether such had been established in that case and provided no guidance on how that fact would be determined in subsequent actions.[13,14] Most lower courts addressing

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[13] The *Bandemer* plurality noted only "[t]hat the characteristics of the complaining [political] group are not immutable or that the group has not been subject to the same historical stigma [as racial groups] may be relevant to the manner in which the case is adjudicated, but these differences do not justify a refusal to entertain such a case." 478 U.S. at 125. It is unclear whether the *Bandemer* plaintiffs formed an identifiable political group. *See also Bandemer v. Davis*, 603 F. Supp. 1479, 1482 (S.D. Ind. 1984) (three-judge court) (referring to plaintiffs as "citizens of Indiana and members of the Democratic Party"), *rev'd.* 478 U.S. 109 (1986); *id.* at 1492 (noting that plaintiffs "align" themselves with the Democrat party); *see also Bandemer*, 478 U.S. at 115 (noting that plaintiffs were "several Indiana Democrats").

[14] Justice O'Connor urged that neither major political party should be allowed to bring a claim for partisan gerrymandering:

> Clearly, members of the Democratic and Republican Parties cannot claim that they are a discrete and insular group vulnerable to exclusion from the political process by some dominant group: these political parties *are* the dominant groups, and the Court has offered no reason to believe that they are incapable of fending for themselves through the political process.

478 U.S. at 152 (O'Connor, J., concurring in the judgment only) (emphasis in the original). One commentator suggests that "the

partisan gerrymandering claims under *Bandemer* have paid scant, if any, attention to the requirement of an "identifiable political group."[15]

In defining an "identifiable political group," the Court should draw guidance from Justice Stevens' concurring opinion in *Mobile v. Bolden*, 446 U.S. 55 (1980). *Mobile* involved a challenge by Afro-American voters to the validity of the at-large election of the governing body of the city (a three-member commission). This Court reversed a decision of the Court of Appeals for the Fifth Circuit, which, among other things, upheld a conclusion of the district court that the at-large election process violated the Fourteenth Amendment. In his concurring opinion, Justice Stevens addressed the thorny problem of identifying an identifiable group of voters:

> In the line-drawing [i.e., districting or redistricting] process, racial, religious, ethnic, and economic gerrymanders are all species of political gerrymanders.

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cause of action the plurality is contemplating [in *Bandemer*] is not about Democrats and Republicans under normal conditions. It is about a political group suffering pervasive discrimination in the political process." Daniel Hays Lowenstein, "Bandemer's Gap: Gerrymandering and Equal Protection," POLITICAL GERRYMANDERING AND THE COURTS (Bernard Grofman, ed. 1990) at 83.

[15] At least three lower courts have addressed this prong of *Bandemer*: *Martinez v. Bush*, 234 F. Supp.2d 1275 (S.D. Fla. 2002) (three-judge court) (analyzing "identifiable political group" according to the "Gingles factors" (i.e., geographical compactness, political cohesiveness and bloc voting by the majority group); *Pope v. Blue*, 809 F. Supp. 392, 396 n.3 (W.D. N.C. 1992) (three-judge court), *aff'd*, 506 U.S. 801 (1992) (merely noting that the only "coherent" theory was one in which the group was only Republican voters, as opposed to Republican voters joined by registered Democrats and Independents); *Republican Party of North Carolina v. Martin*, 980 F.2d 943, 956 n.23 (4th Cir. 1992) (allegation of registered Republicans and Democrats that they "have and will continue to vote for Republican candidates" sufficient to survive motion to dismiss).

> From the standpoint of the groups of voters that are affected by the line-drawing process, it is also important to recognize that it is the group's interest in gaining or maintaining political power that is at stake. The mere fact that a number of citizens share a common ethnic, racial, or religious background does not create the need for protection against gerrymandering. *It is only when their common interests are strong enough to be manifested in political action that the need arises. For the political strength of a group is not a function of its ethnic, racial, or religious composition; rather, it is a function of numbers – specifically the number of persons who will vote in the same way.*

Id. at 88 (Stevens, J., concurring) (emphasis added). *See also Karcher v. Daggett*, 462 U.S. 725, 754 (1983) (Stevens, J. concurring) ("As a threshold matter, plaintiffs must show that they are members of an identifiable political group whose voting strength has been diluted. They must first prove that they belong to a politically salient class ... .").

To constitute a "politically identifiable group," a group must be one whose members vote the same, i.e., a cohesive group. *Bandemer*, when understood in terms of its origins, actually requires this, since only a cohesive group can suffer discriminatory effects as a result of an electoral scheme. *See Martinez*, 234 F.Supp.2d at 1334-1335 (to establish the causal link between the challenged electoral scheme and the vote dilution injury complained of, a plaintiff alleging a partisan gerrymander must show (1) geographical compactness of the minority group; (2) political cohesiveness of the minority group; and (3) block voting on the part of the majority group)). *See also* Comment, *Davis v. Bandemer: Remedial Difficulties in Political Gerrymandering*, 37 EMORY L.J. 443, 479 (1988) ("In political gerrymandering, courts must find a correlation between Democrats and those who rigidly vote for Democratic candidates. ... To maintain a legitimate argument that 'Democrats' were unable to elect Democratic

candidates, the plaintiff group must, with at least some degree of specificity, point out which persons were denied an effective vote. Merely asserting that some dynamic, amorphous group had its votes diluted cannot suffice. ... Those who occasionally cross over party lines to vote for non-Democrats widen the gap between plaintiff groups and their representative political group. Because individual preferences in voting have become so prevalent, few, if any, large political organizations today can assert that their members consistently vote along straight party lines.").

In this case, Appellants' own allegations, which revealed widespread cross-over and split-ticket voting, should have been deemed fatal to their attempt to depict Democrat voters in Pennsylvania as an "identifiable political group." *See Martinez*, 234 F.Supp.2d at 1343-1344 (because voters often cross-over and vote for candidates of other parties, plaintiffs, who did not identify the voters but only a percentage of votes for Democrat candidates, failed to establish the cohesiveness of the group identified as voters who consistently vote Democrat).

B. Partisan Gerrymandering is a Non-Justiciable Political Question

In their motion to dismiss the amended complaint, Presiding Officers objected to the justiciability of the partisan gerrymandering challenge to Act 1. Although considering itself bound by *Bandemer* to consider the claim, the three-judge court noted the objection. *Vieth I*, 188 F. Supp.2d at 538; App. at 21a. In resisting Plaintiffs' challenge to Act 34, Presiding Officers maintained that Plaintiffs were bound by *Vieth I*. By incorporating *Vieth I* into its January 24, 2003 order in *Vieth III*, the three-judge court recognized the justiciability objection in conjunction with Act 34. This Court could affirm the order below on the alternative basis that partisan gerrymandering is a non-justiciable political question.

In *Bandemer*, this Court was asked whether a pure partisan gerrymandering claim presents a justiciable controversy or a non-justiciable political question. *See* 478

U.S. at 118. A majority, in an opinion by Justice White, determined that such a claim is justiciable. Justice O'Connor, joined by then-Chief Justice Burger and then-Justice Rehnquist, concluded the opposite in an insightful concurrence which highlighted the flaws and dangerous presumptions undergirding the plurality opinion and predicting the inevitable failure of the analytical framework it set forth.

Time and experience have proven Justice O'Connor correct – "[t]he Equal Protection Clause does not supply judicially manageable standards for resolving purely political gerrymandering claims, and no group right to an equal share of political power was ever intended by the Framers of the Fourteenth Amendment." *Id.* at 147 (O'Connor, J., concurring in the judgment only). The Court should reconsider and overrule *Bandemer* and acknowledge that a partisan gerrymandering claim brought by a major political party presents a political question into which the judiciary cannot inquire.

An action presents a non-justiciable political question where there is "'a lack of judicially discoverable and manageable standards for resolving it,'" or where "'the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion' is apparent." *Bandemer*, 478 U.S. at 148 (O'Connor, J., concurring in the judgment only) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)). Justice O'Connor explained that allowing a major political group to bring a partisan gerrymandering claim forces the judiciary to favor "some form of rough proportional representation for all political groups," thus presupposing an initial policy determination forbidden to the judiciary. *Id.* at 145. Past precedent establishing the one-person, one-vote principle and adjudicating the rights of racial minority groups reveals that it is the individual's right to vote – not the right of the group – that is the appropriate subject of judicial protection. Extending such protections to major political groups overlooks the realities of the nation's two-party political system:

> Clearly, members of the Democratic and Republican Parties cannot claim that they are a discrete and insular group vulnerable to exclusion from the political process by some dominant group; these political parties *are* the dominant groups, and the Court has offered no reason to believe that they are incapable of fending for themselves.... [E]ach major party presumably has ample weapons at its disposal to conduct the partisan struggle that often leads to a partisan apportionment, but also often leads to a bipartisan one.

Id. at 152 (O'Connor, J., concurring in the judgment only) (emphasis in the original).

Justice O'Connor also explained why the plurality's analysis for partisan gerrymandering claims is itself evidence that a judicially-manageable standard is impossible in this context, as it will inevitably "evolve towards some loose form of proportionality." *Id.* at 155. She predicted that extending the rights protected by vote dilution analysis to groups would complicate judicial review by increasing the number of competing claims to equal group representation, *id.* at 156, and noted the additional layer of complexity added by the fact that individuals' voting patterns are not immutable. *See id.* For the judiciary to adjudicate a partisan gerrymandering claim under the *Bandemer* plurality's analysis, they must look for "some form of 'undue' disproportionality with respect to electoral success ... because otherwise they will find their decisions turning on imponderables such as whether the legislators of one party have fairly represented the voters of the other." *Id.* at 157.

Justice O'Connor also predicted the inevitable consequence of holding partisan gerrymandering justiciable and the havoc it would wreak upon the judiciary as it tried to negotiate the redistricting thicket:

> The step taken today is a momentous one, which if followed in the future can only lead to political instability and judicial malaise. *If members of the*

> *major political parties are protected by the Equal Protection Clause from dilution of their voting strength, then members of every identifiable group that possesses distinctive interests and tends to vote on the basis of those interests should be able to bring similar claims. Federal courts will have no alternative but to attempt to recreate the complex process of legislative apportionment in the context of adversary litigation* in order to reconcile the competing claims of political, religious, ethnic, racial, occupational, and socioeconomic groups. Even if there were some way of limiting such claims to organized political parties, *the fact remains that the losing party or the losing group of legislators in every reapportionment will now be invited to fight the battle anew in federal court.* Apportionment is so important to legislators and political parties that the burden of proof the plurality places on political gerrymandering plaintiffs is unlikely to deter the routine lodging of such complaints. Notwithstanding the plurality's threshold requirement of discriminatory effects, the Court's holding that political gerrymandering claims are justiciable has opened the door to pervasive and unwarranted judicial superintendence of the legislative task of apportionment. There is simply no clear stopping point to prevent the gradual evolution of a requirement of roughly proportional representation for every cohesive political group.

Id. at 147 (O'Connor, J., concurring in the judgment only) (emphasis added).

This case is the incarnation of Justice O'Connor's fears. The redistricting plans to be put in place under the 2000 Census offered both major parties an opportunity to try to influence state legislatures to draw districts holding greater promise of electing members of their party. If a party perceived that a state's enacted plan might alter the balance of representatives in that state, as happened here, there was great incentive to litigate a partisan gerrymandering claim and attempt to get the federal court

to draw the plan. Since federal courts are not permitted to undertake constitutional partisan gerrymandering, plaintiffs hoped that an expected loss of seats might be prevented.

A situation very similar to that which occurred in Pennsylvania took place in Michigan and Florida. *See O'Lear*, *supra*, and *Martinez*, *supra*. In each state, plaintiffs wanted the federal courts to throw out a congressional redistricting plan enacted pursuant to that state's legislative process. To permit challenges to duly-enacted congressional redistricting legislation on the basis of partisan gerrymandering delegitimizes the political process that this Court has recognized time and again as the preferred method for redistricting. *See e.g., White v. Weiser*, 412 U.S. 783, 794-96 (1973) ("From the beginning, we have recognized that 'reapportionment is primarily a matter for legislative consideration and determination;' ... Districting inevitably has sharp political impact and inevitably political decisions must be made by those charged with the task") (quoting *Reynolds v. Sims*, 377 U.S. 533, 586 (1964)); *Wise v. Lipscomb*, 437 U.S. 535, 539-540 (1978); *Growe v. Emison*, 507 U.S. 25, 34 (1993) ("'reapportionment is primarily the duty and responsibility of the state through its legislature or other body, rather than of a federal court'") (quoting *Chapman v. Meier*, 420 U.S. 1, 27 (1975)).

The political party which lost its bid in the congressional redistricting battle in Pennsylvania's General Assembly simply re-waged the battle in federal court. It is appropriate for this Court to contemplate whether a decision of the highest court in the land that facilitates this tactic is advisable.

CONCLUSION

For the foregoing reasons, the three-judge court's January 24, 2003 order in *Vieth III* dismissing the partisan gerrymandering challenge to Act 34 should be summarily affirmed.

Respectfully submitted,

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MAY 30 2003
OFFICE OF THE CLERK

No. 02-1580

In the Supreme Court of the United States

RICHARD VIETH, ET AL.,
Appellants

v.

ROBERT C. JUBELIRER, ET AL.,
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MOTION TO AFFIRM OF APPELLEES RENDELL, KNOLL, CORTES, AND ACCURTI

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QUESTION PRESENTED

1. Whether the District Court correctly dismissed the appellants' claim of partisan gerrymandering in Pennsylvania's congressional redistricting plan?

PARTIES TO THE PROCEEDING

The appellants are Richard and Norma Jean Vieth and Susan Furey.[1]

The appellees on whose behalf this motion is filed are Edward G. Rendell, the Governor of Pennsylvania; Catherine Baker Knoll, Lt. Governor of Pennsylvania; Pedro A. Cortes, Acting Secretary of the Commonwealth; and Monna J. Accurti, the Commissioner of Pennsylvania's Bureau of Commissions, Elections and Legislation.[1]

Other appellees, separately represented, are Robert C. Jubelirer, the President *Pro Tempore* of the Pennsylvania Senate; and John M. Perzel, Speaker of the Pennsylvania House of Representatives.

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[1]These appellees have been substituted for their predecessors pursuant to Supreme Court Rule 35.3.

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The District Court's opinion of January 24, 2003 is reported at 241 F.Supp.2d 478 and is reprinted in the Appendix to the Jurisdictional Statement ("J.S. App.") at 1a. An earlier opinion of the District Court, filed February 22, 2002, is reported at 188 F.Supp. 2d 532 and is reprinted at J.S. App. 13a. The opinion of the District Court filed on April 8, 2002, is reported at 195 F.Supp.2d 672 and is reprinted at J.S. App. 46a.

STATEMENT OF JURISDICTION

This is an appeal from a final opinion and order issued by a three-judge district court, over which the Court has jurisdiction pursuant to 28 U.S.C. §1253. The District Court's order was entered on January 24, 2003. Appellants filed their Notice of Appeal on February 24, 2003, and filed their Jurisdictional Statement within sixty days of that date.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article I, Section 4 of the Constitution provides in relevant part that "[t]he times, places and manner of holding elections for senators and representatives, shall be prescribed in each State by the legislature thereof...."

2. Section 1 of the Fourteenth Amendment to the Constitution provides in relevant part that "[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws."

3. Pennsylvania's Act 2002-1 ("Act 1"), *formerly codified at* Pa. Stat. Ann., tit. 25, § 3595.1(Purdon) (repealed) is not reprinted in the Appendix to the Jurisdictional Statement. It is available in 2002 Purdon PA. Leg. Serv. 1.

4. Pennsylvania's Act 2002-34 ("Act 34"), *codified at* Pa. Stat. Ann., tit. 25, §§ 3595.101 through 3595.501(Purdon 2003 Supp.), is not reprinted in the Appendix to the Jurisdictional Statement, although several maps which purport to reflect Act 34 are reprinted at J.S. App. 164-166a.

STATEMENT OF THE CASE

This case arises out of the congressional redistricting plan adopted by the Pennsylvania legislature in the wake of the 2000 decennial census. The appellants are three Pennsylvania voters who claim that this redistricting plan offends the Constitution. They brought this action pursuant to 42 U.S.C. § 1983, seeking declaratory and injunctive relief against the Governor of Pennsylvania and other state officials.

1. As a result of the 2000 decennial census, Pennsylvania's congressional delegation was reduced from twenty-one to nineteen representatives. J.S. App. 3a. In response, the Pennsylvania General Assembly enacted Act 2002-1 ("Act 1"), which redivided the Commonwealth among nineteen congressional districts. Although the appellants condemn Act 1 as an exercise in "extreme ... partisan bias,"[2] J.S. at 4, they acknowledge

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[2]Appellants, relying on an opinion piece in a local legal newspaper, say that Act 1 "received national attention as 'the most partisan congressional gerrymander of this young century, and among the worst in the last several decades of the earlier millennium.'" J.S. at 4, *quoting* G. Harvey, *Redistricting Plan Draws the Line Between Equal and Fair*, Legal Intelligencer, May 20, 2002. The newspaper notes, as the appellants do not, (continued...)

(in a footnote) that in fact Act 1 enjoyed bipartisan support. J.S. at 4 n.2. Forty-two — nearly half — of the members of the Democratic Caucus of the Pennsylvania House of Representatives voted in favor of Act 1, and without the support of these House Democrats Act 1 would not have passed. J. S. App. 89a.

Of the Commonwealth's roughly 7.7 million registered voters, about 3.7 million (48%) are Democrats, and about 3.2 million (42%) are Republicans. J.S. App. 84a. Of the nineteen congressional districts created by Act 1, seven have a majority Democrat registration and seven have a majority Republican registration. In the remaining five districts, two have a Democrat plurality of registered voters and three have a Republican plurality. J.S. App. 90a-91a. Nevertheless, appellants alleged that under Act 1, Democrat candidates would take only five or six seats, while Republicans would win thirteen or fourteen, even though Democrat candidates were likely to win a majority of the statewide congressional vote. This, they claimed would constitute an impermissible partisan gerrymander. J.S. App. 137a-138a.

Neither of those projections, however, proved reliable. Election results that do not reflect registration figures are not unusual in Pennsylvania; in statewide elections between 1998 and 2001, Republican candidates won thirteen elections and Democrats won three. J.S. App. 85a-87a. In the 2002 congressional elections held pursuant to Act 1, Republican candidates received 56.2% of the statewide vote, while Democrats received 41.5%.

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[2](...continued)
that this hyperventilating assessment comes from a Democrat Party ward officer. *Ibid*, available on WestLaw at 5/20/2002 Legal Intelligencer 6.

Republicans won twelve of Pennsylvania's nineteen seats, and Democrats took seven.[3]

The appellants also alleged that Republicans have "essentially shut Democrats and Democratic voters out of the political process." J.S. App. 140a. The complaint, however, contains no allegations to support this conclusory assertion. As the District Court remarked,

> there are no allegations that anyone has ever prevented, or will ever prevent, Plaintiffs from: registering to vote; organizing with other like-minded voters; raising funds on behalf of candidates; voting; campaigning; or speaking out on matters of pubic concern.

J.S. App. 39a.

2. The voters brought this action in the Middle District of Pennsylvania, which convened a three-judge court pursuant to 28 U.S.C. § 2284. In the District Court, the voters raised two principal claims: first, that the congressional districts drawn by Act 1 represented an impermissible partisan gerrymander, in violation of the principles recognized in *Davis v. Bandemer*, 478 U.S. 109 (1986); and second, that Act 1's districts were not precisely equal and therefore violated the Constitution's guarantee of one person, one vote. J.S. at 5-6; J.S. App. 18a-19a.

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[3]*See* PA DEPARTMENT OF STATE, *Official 2002 General Election Results*, available at http://www.dos.state.pa.us/elections/elec_results/dsf/elec_menu.cgi?year=2002&etype=G (visited May 29, 2003).

On February 22, 2002, the District Court dismissed the appellants' partisan gerrymandering claim.[45] J.S. App. 39a, 44a-45a. The District Court, however, declined to dismiss appellants' one person, one vote claim. J.S. App. 28a-31a. After an evidentiary hearing, the District Court struck down Act 1 on one person, one vote grounds, enjoined its implementation, and ordered the Pennsylvania General Assembly to enact a new redistricting plan and submit it to the court for its review and approval. J.S. App. 46a, 57a.

The District Court, however, stayed its injunction pending the disposition of appeals taken by the Governor and other defendants[6]; and Pennsylvania, using the congressional districts drawn by Act 1, held its primary and general elections, with the results described above. In the meantime, the Pennsylvania General Assembly enacted a revised congressional redistricting plan, known as Act 2002-34 ("Act 34"), to cure the one-person one-vote flaw which the District Court had identified and to govern future elections.

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[4]At the same time, the District Court dismissed claims based on the Privileges and Immunities Clause, the First Amendment, and Section 1983, for failure to state a claim, and dismissed all claims against the Commonwealth itself on the basis of the Commonwealth's Eleventh Amendment immunity. J.S. App. 21a-23a, 39a-42a.

[5]The appellants appealed this order at docket number 01-1873. That appeal was dismissed as moot on October 7, 2002. *Vieth v. Jubelirer*, 123 S.Ct. 68 (2002).

[6]The appeal of the Governor and other executive branch defendants was docketed at No. 01-1823; and the appeal of defendants from the legislative branch was docketed at No. 01-1817. Both appeals were dismissed as moot on October 7, 2002. *Schweiker v. Vieth*, 123 S.Ct. 68 (2002); *Jubelirer v. Vieth*, 123 S.Ct. 67 (2002).

The appellants asserted, however, that Act 34 had not cured what they regarded as Act 1's shortcomings as to partisan gerrymandering, and they asked the District Court to impose remedial districts. J.S. App. 1a, 11a. On January 24, 2003, the District Court denied the appellants' motion, relying on its earlier decision:

> In [*Vieth v. Commonwealth of Pennsylvania*, 188 F.Supp.2d 532 (M.D.Pa. 2002) J.S. App. 13a-45a] *Vieth I*, the court dismissed this claim because "plaintiffs [did not] allege facts indicating that they had been shut out of the political process, and therefore, they cannot establish an actual discriminatory affect on them" as required by *Davis v. Bandemer*, [478 U.S. 109 (1986)] . . .. Act 34 is essentially the same redistricting plan as Act 1 except for the fact that Act 34 does not possess an avoidable population deviation. Accordingly, whatever partisan effect Act 1 had, Act 34 will have as well. The court therefore incorporates by reference its discussion in *Vieth I* regarding partisan gerrymandering and holds that the undisputed facts in this case are insufficient to establish such a claim.

J.S. App. 11a-12a (internal citations omitted).

In *Vieth I*, the District Court had held:

> [appellants'] allegations amount to this[:] Act 1 is rigged to guarantee that thirteen of Pennsylvania's nineteen congressional representatives will be Republicans. As a result, Democrats will have a more difficult time electing their candidates.

J.S. App. 36a. This, the District Court said, "is simply an argument for proportional representation. However, *Bandemer* soundly rejected such a basis for an equal protection violation." J.S. App. 37a. The District Court

therefore held that appellants' allegations were "insufficient to make out a cause of action" under *Bandemer*. Accordingly, entered judgment in favor of the appellees and against the appellants. J.S. App. 12a. This appeal followed.

THE DISTRICT COURT CORRECTLY DISMISSED THE APPELLANTS' CLAIM OF PARTISAN GERRYMANDERING, AND APPELLANTS HAVE NOT PRESENTED A SUBSTANTIAL QUESTION TO THE CONTRARY.

A. Appellants' Claim That They Were Deprived of Proportional Representation Is Foreclosed by *Davis v. Bandemer*.

As the District Court recognized, appellants' political gerrymandering claim "is simply an argument for proportional representation." J.S. App. 37a. And as the District Court correctly pointed out, allegations of this kind, without more, "are insufficient to make out a cause of action for violation of equal protection." *Ibid, citing Davis v. Bandemer*, 478 U.S. at 130. Rather, *Bandemer* required the appellants to establish, not just a history of disproportionate election results, but *also* that "the electoral system is arranged in a manner that will consistently degrade a voter's, or group of voter's influence on the political process as a whole." J.S. App. 33a, *quoting Bandemer*, 478 U.S. at 105.

The appellants argue, not merely that *this* District Court erred in reading *Bandemer* this way, but that *every* case applying *Bandemer* — including a slew of decisions summarily affirmed by this Court — has committed the same error. J.S. at 19-20 (discussing cases which have "misinterpret[ed] *Bandemer* in this way"). *See* J.S. at 16 n.7 (collecting cases summarily affirmed by the Court). *See also Martinez v. Bush*, 234 F.Supp.2d 275 (S.D. Fla.

2002) (3-judge court) (claim that disproportionate results alone constitutes unconstitutional partisan gerrymander was "explicitly rejected" in *Bandemer*); *O'Lear v. Miller*, 222 F.Supp.2d 850, 860 (E.D. Mich.) (3-judge court), *aff'd*, 123 S.Ct. 512 (2002) (same). In the appellants' view, *Bandemer* required them to show "extremely disproportionate outcomes," and nothing more. J.S. at 22. We submit, however, that this argument does not present a substantial question for the Court's consideration.

In the first place, as we discussed above, *supra* at 3-4, the appellants did *not* show that Pennsylvania's redistricting statute produced "extremely disproportionate" results. In the 2002 congressional elections held under this statute, Republican candidates received 56.2% of the aggregate statewide vote and won twelve of Pennsylvania's nineteen seats, while Democrats, who received 41.5% of the vote, won the other seven. While these results may not reflect a perfect proportionality between votes garnered and seats won — which, of course, the Constitution does not require — they cannot fairly be described as "extremely disproportionate."

Second, it is the appellants, and not the entire federal judiciary, who misunderstand *Bandemer*. There is no question that *Bandemer* is, in many respects, a problematic decision which has been severely criticized both within and without the Court. *Bandemer's* holding that a claim of partisan gerrymandering presents a justiciable claim was adopted only over the vigorous dissent of three Justices. *See id.*, 478 U.S. at 144 (O'Connor, J., concurring in the judgment). Further, the lack of a majority opinion on the elements of such a claim, and what the District Court in this case called the "recondite standard" in the plurality opinion, J.S. App. 33a, offer little guidance to the lower courts. *See Erfer v.*

Commonwealth, 794 A.2d 325, 332 (Pa. 2002), *reprinted at* J.S. App. 72a ("plurality's opinion ... obscur[es] precise nature of the standard to be employed"); M. Lewyn, *How to Limit Gerrymandering*, 45 FL. L. REV. 403, 443 (1993)(collecting commentary).

Nevertheless, on the point raised by the appellants, *Bandemer* could not be more clear: all seven of the Justices who concurred in the judgment flatly rejected the idea that a lack of proportional representation, without more, violates the Equal Protection Clause. As the *Bandemer* plurality said,

> Our cases ... clearly foreclose any claim that the Constitution requires proportional representation or that legislatures in reapportioning must draw district lines to come as near as possible to allocating seats to the contending parties in proportion to what their anticipated statewide vote will be.

Id., 478 U.S. at 130 (plurality opinion). To the contrary,

> [W]e have required a *substantially greater showing of adverse effects than a mere lack of proportional representation* to support a finding of unconstitutional vote dilution. ... These holdings rest on a conviction that the mere fact that a particular apportionment scheme makes it more difficult for a particular group ... to elect the representatives of its choice does not render that scheme constitutionally infirm.

Id., 478 U.S. at 131 (plurality opinion) (emphasis added). *Accord id.*, at 145 (O'Connor, J., concurring in the judgment) (proportional representation not "consistent with our history, our traditions, or our political institutions"), 155 (proportionality requirement would be "calamitous for the federal courts, for the States, and for our two-party system").

Thus, there may well be doubts about the correctness of *Bandemer's* holding that claims of partisan gerrymandering are justiciable at all. And if such claims are justiciable, there may well be doubts about the precise nature of the "substantially greater showing of adverse effects," beyond a mere lack of proportional representation, which a plaintiff must make to establish such a claim. But there is no doubt at all that *some* showing beyond a mere lack of proportionality must be made, and that appellants failed to make *any* such showing in this case. The appellants have thus not raised any substantial question about the correctness of the District Court's reading of *Bandemer*.

B. *Shaw v. Reno* and its Progeny Do Not Change this Result.

Appellants argue, however, that the Court's decisions in *Shaw v. Reno*, 509 U.S. 630 (1993), and its progeny have changed — or as they put it, "clarified" — the analysis of partisan gerrymandering claims from that set forth in *Bandemer*. J.S. at 22-25. According to the appellants, drawing districts on partisan lines is constitutionally indistinguishable from drawing them on racial lines, and should be analyzed the same way. J.S. at 23. *Shaw* itself, however, explicitly rejects this premise.

The Court in *Bandemer* rejected the view, expressed in Justice Powell's dissenting opinion, that "the intentional drawing of district boundaries for partisan ends and for no other reasons violates the equal protection clause in and of itself." *Bandemer*, 478 at 138 (plurality opinion); *id.*, at 144 (O'Connor, J., concurring in the judgment) (partisan gerrymandering claims not justiciable at all). In *Shaw v. Reno, supra*, on the other hand, the Court held that "segregat[ing] voters into separate voting districts because of their race" does

violate the Equal Protection Clause, unless it is narrowly tailored to serve a compelling state interest. *Id.*, 509 U.S. at 658. As the Court remarked:

> A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid.

Id., at 647.

The Court, however, specifically rejected the appellants' notion that this approach to *racial* gerrymandering claims would likewise apply to claims of *partisan* gerrymandering.

> Classifying citizens by race, as we have said, threatens special harms that are not present in our vote-dilution cases. *It therefore warrants different analysis.*
>
> The dissenters ... suggest that a racial gerrymander of the sort alleged here is functionally equivalent to gerrymanders for nonracial purposes, such as political gerrymanders. ... But nothing in our case law compels the conclusion that racial and political gerrymanders are subject to precisely the same constitutional scrutiny. In fact, our country's long and persistent history of racial discrimination in voting — as well as our Fourteenth Amendment jurisprudence, which always has reserved the strictest scrutiny for discrimination on the basis of race... — would seem to compel the opposite conclusion.

Id., at 650 (emphasis added). Even the dissenters in *Shaw* did not adopt the appellants' position. They argued, not that claims of partisan gerrymandering should be analyzed under the relatively stringent standard of *Shaw*, but the other way around: that the racial gerrymandering claim in *Shaw* should have been analyzed under the relatively lenient standard of *Bandemer*. *Shaw*, 509 U.S. at 662-63 (White, J., dissenting).

Later cases, as the appellants concede, continue to recognize this "distinction between race and politics as districting concerns." J.S. at 24, *citing Hunt v. Cromartie*, 526 U.S. 541 (1999) *and Easley v. Cromartie*, 532 U.S. 234 (2001). As Justice O'Connor succinctly put it, "[p]olitical affiliation is the keystone of the political trade. Race, ideally, is not." *Bandemer*, 478 U.S. at 161 (O'Connor, J., concurring in the judgment), *quoting United Jewish Organizations of Williamsburg, Inc. v. Carey*, 430 U.S. 144, 171 n.1 (1977) (Brennan, J., concurring). That distinction is firmly rooted in our history and in the Constitution, and appellants have offered no substantial reason to reexamine it.

C. Article I, Section 4 of the Constitution Adds Nothing to Appellants' Equal Protection Claim.

Finally, appellants claim that Article I, § 4 of the Constitution places limits on the States' redistricting authority which are more stringent than those of the Equal Protection Clause as interpreted in *Bandemer*. J.S. at 25. They offer no principled reason, however, why this should be so, and neither text of Article I, § 4, nor the Court's decisions, offer them any support.

> Article I, §4 provides that:
>
> The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed

> in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

This provision is, on its face, a positive grant of authority to the States; it does not, by its terms, forbid the States from doing anything, nor has the Court so interpreted it. When the Court has invalidated state election measures, it has done so either because the measures violated other provisions of the Constitution, *see U.S. Term Limits v. Thornton*, 514 U.S. 779 (1995) (term limit on members of Congress violated Qualifications Clauses); *Wesberry v. Sanders*, 376 U.S. 1 (1964) (grossly malapportioned congressional districts violated Art. I, § 2); or because they exceeded the authority conferred by Article I, § 4, and were therefore simply beyond the States' power. *See Cook v. Gralike*, 531 U.S. 510 (2001). But appellants have cited no case in which the Court has held that a state provision *violated* Article I, § 4.

In this case, there is no question of Pennsylvania having exceeded its Article I, § 4 authority. Congress, exercising its own authority under Article I, § 4, has authorized and required the States to establish congressional districts. *See* 2 U.S.C. § 2c ("In each State entitled ... to more than one Representative ... there shall be established a number of districts equal to the number of Representatives...."); *id.*, § 2a (after reapportionment, States to be "redistricted in the manner provided by the law thereof"). Unless, therefore, Pennsylvania's congressional redistricting plan violates some other constitutional provision — such as the Equal Protection Clause — it must be upheld.

We have thus come full circle. Neither appellants' Article I, § 4 claim, nor their equal protection claim,

presents a substantial question justifying plenary consideration by the Court.

CONCLUSION

The Court should summarily affirm the District Court's order.

Respectfully submitted,

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On Appeal from the United States District Court for the Middle District of Pennsylvania

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http://www.dos.state.pa.us/bcel/cwp/view.asp?Q=440275&A=1099 5

Plaintiff-appellants hereby respond to the motions to affirm filed by appellees Robert C. Jubelirer, *et al.* ("Presiding Officers") and Edward G. Rendell, *et al.* ("Executive Officers"). Neither set of appellees contests, let alone refutes, appellants' central argument that the District Court's construction of *Davis v. Bandemer*, 478 U.S. 109 (1986), would effectively eliminate partisan-gerrymandering claims altogether. If such claims retain any force, they surely apply here, where the Republican Party used its momentary control of the state legislature and governor's office to cement a decade-long grip on a supermajority of the State's congressional seats. Contrary to appellees' assertions, appellants in this case seek a vindication of the fundamental principle of majority rule, not proportional representation. Where, as under the challenged Pennsylvania redistricting plan, one political party's congressional candidates can repeatedly attract majority support in the electorate, year after year, yet never control the State's congressional delegation, "the electoral system is arranged in a manner that will consistently degrade . . . a group of voters' influence on the political system as a whole." *Id.* at 132 (plurality opinion). Because the Constitution and the republican principle of majority rule that infuses it forbid such a result, the Court should note probable jurisdiction and reverse the judgment below.

ARGUMENT

I. UNDER THE DISTRICT COURT'S MISINTERPRETATION OF *BANDEMER*, IT IS IMPOSSIBLE TO VINDICATE THE CONSTITUTIONAL GUARANTEE OF MAJORITY RULE.

In requesting summary affirmance of the District Court's dismissal of appellants' partisan-gerrymander claims, appellees never address the central flaw underlying

that decision. The District Court's application of *Bandemer* does not, as appellees suggest, merely erect a "difficult" or "stringent" standard. *See* Presiding Officers' Br. at 10. Rather, under the District Court's conception of partisan gerrymandering, the requirements of such a claim are, as a practical matter, *impossible* to meet. *See, e.g.*, J.S. App. 125a (Zappala, C.J., dissenting) ("If the record of this case does not establish unconstitutional political gerrymandering, *no such claim exists*. This Court should not then waste its valuable judicial resources entertaining illusory claims that, in reality, can never be established.") (emphasis added); Daniel H. Lowenstein & Richard L. Hasen, *Election Law Cases and Materials* 10 (2d ed. 2002 Update) ("To say the least, it would be the rare case when a major political party could make and substantiate allegations of the sort that the *Vieth* court seems to require.").

It is almost unimaginable that voters aligned with a major American political party could validly make the allegations deemed necessary by the District Court – namely, that they "will be completely shut out of the political process." J.S. App. 33a.[1] Under the District Court's test, plaintiffs would have to demonstrate that someone has "prevented or will . . . prevent [them] from: registering to vote; organizing with other like-minded voters; raising funds on behalf of candidates; voting; campaigning; or speaking out on matters of public concern." *Id.* at 39a (citing *Badham v. Eu*, 694 F. Supp. 664, 670 (N.D. Cal. 1988) (three-judge court), *summarily aff'd*, 488 U.S. 1024 (1989)). Even the most pervasively biased partisan gerrymanders will not, by themselves, create "impediments to . . . full participation in the 'uninhibited, robust, wide-open' public debate on which our political system relies." *Id.* (quoting *Badham*, 694 F. Supp. at 670 (quoting *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964))). Nor is it conceivable that either party would otherwise attempt to exclude the other altogether from the public forum.

[1] As appellants have previously explained, *see* J.S. 9-11, 16 & n.6, the District Court's January 24, 2003 order denying appellants' partisan-gerrymandering claim as to Act 34 incorporated by reference the court's earlier dismissal of the claim with respect to Act 1. *See* J.S. App. at 11a-12a. Appellants therefore cite the District Court's earlier decision setting forth its formulation of the partisan-gerrymandering test.

Of course, if one party ever were able to inflict the improbable, extreme harms required by the District Court's partisan-gerrymandering standard, that conduct would be independently unconstitutional – regardless of the fairness or unfairness of any particular redistricting map. The First and Fourteenth Amendments obviously do not permit one party to "shut out" the other from public debate.[2]

Notably, appellees never dispute appellants' argument that, under the District Court's decision, no plaintiff could ever allege a valid political-gerrymandering claim. At bottom, appellees' defense of the District Court's decision thus is no different from their call for an outright overruling of *Bandemer*. *See* Presiding Officers' Br. at 25; *see also* Executive Officers' Br. at 10 ("[T]here may well be doubts about the correctness of *Bandemer*'s holding that claims of partisan gerrymandering are justiciable at all."). However, as explained more fully below, *see infra* Part II-B, this Court in *Bandemer* properly recognized an independent, justiciable partisan-gerrymandering claim.

Without contesting the virtual impossibility of meeting the District Court's test, appellees devote the bulk of their motions to attacking a straw man. Appellees repeatedly

[2] *See, e.g., McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995) ("Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution."); *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971) ("[I]t can hardly be doubted the [First Amendment] has its fullest and most urgent application precisely to the conduct of campaigns for political office."); *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 626 (1969) ("Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government."); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666 (1966) ("[T]he Equal Protection Clause of the Fourteenth Amendment restrains the States from fixing voter qualifications which invidiously discriminate.").

echo the District Court's mischaracterization of appellants' claim as "'simply an argument for proportional representation,'" Executive Officers' Br. at 6-7 (quoting J.S. App. 37a), and then challenge the propriety of such a claim. But as previously explained, appellants seek to preserve the fundamental principle of *majority rule*, not proportional representation. Appellants' complaint alleges three elements: (1) severe disproportionality, (2) that will last over five consecutive election cycles and (3) will repeatedly and systematically thwart majority rule. *See* J.S. 15.

The frustration of majority rule is the linchpin of appellants' claim. As their complaint clearly alleges, today one party consistently wins a majority of the vote in congressional elections in Pennsylvania, yet the other party is now virtually assured a majority of the State's congressional seats. But the guiding "majoritarian ethic" underlying our system of government demands that the party receiving the most votes typically will win the most seats. *Bandemer*, 478 U.S. at 125 n.9. Appellants do not argue that the majority party's fraction of the seats must be *proportional* to its fraction of the votes; indeed, the principle of majority rule is upheld regardless of whether the prevailing party in an election wins a proportionate share of the seats or 100% of the seats (as would occur, for example, in a winner-take-all, at-large election). Democracy is thwarted, however, when one party earns majority support in the electorate yet wins fewer seats than the party it defeated. As the majority opinion in *Bandemer* made clear, partisan-gerrymandering claims are meant to ensure "that majorities are not consigned to minority status." *Bandemer*, 478 U.S. at 125 n.9.[3]

[3] Presiding Officers are simply wrong when they attribute this statement in *Bandemer* – what they term "[a]ppellants' 'consigning' argument" – to Justice O'Connor. *See* Presiding Officers' Br. at 12. Footnote 9 of *Bandemer* falls within Justice White's opinion for the Court, supported by six Justices. Appellants' argument that majorities should not be consigned to minority status is thus hardly a "cobbl[ing] together [of] a purported majority view." Presiding Officers' Br. at 12.

Because appellees cannot deny that Pennsylvania's redistricting plan was designed to ensure Republicans control of a strong majority of the Commonwealth's congressional seats, they try instead to undermine appellants' allegation that Democrats are the most popular party in Pennsylvania congressional elections. As an initial matter, appellees' reliance on November 2002 election data is improper here because the District Court rejected appellants' partisan-gerrymandering claim on a motion to dismiss. Therefore, the Court should review that decision taking all allegations in the complaint as true and viewing them in the light most favorable to appellants. *See, e.g., Illinois, ex rel. Madigan v. Telemarketing Assocs., Inc.*, 123 S. Ct. 1829, 1839 (2003). In any event, contrary to the Presiding Officers' assertions, *see, e.g.*, Presiding Officers' Br. at 8 n.8, the 2002 election results actually bolster appellants' claims. In the 2002 gubernatorial race – the most recent statewide race in Pennsylvania – the Democratic candidate won with more than 53% of all votes cast,[4] confirming appellants' allegations that Democratic voters across Pennsylvania constitute more than half the voters statewide. Although voters overwhelmingly elected a Democratic governor, that same Democratic majority in the congressional elections carried only 7 of 19 seats. This violation of the "majoritarian ethic" is precisely the sort of outcome that the Constitution prohibits. *Bandemer*, 478 U.S. at 125 n.9.

For their part, the Executive Officers dispute the voting strength of Democrats statewide, relying on aggregate figures for all votes cast in the 2002 congressional elections. *See* Executive Officers' Br. at 3, 8. But those figures – indicating that Republican congressional candidates received 56.2% of the statewide vote, while Democrats received 41.5%, *see id.* – are highly misleading, because they include five congressional races in which Republicans ran

[4] All 2002 election data cited in this brief come from the official website of the defendant-appellee elections commissioner. *See* http://www.dos.state.pa.us/bcel/cwp/view.asp?Q=440275&A=1099.

uncontested.[5] The reluctance of any Democratic candidates even to run in those heavily Republican districts underscores the partisan skew of the challenged map. In the districts where both major parties competed, Democrats received a majority of the popular vote but Republicans were rewarded with a majority of the seats. Furthermore, Republicans received more than 60% of the vote in a majority of districts (10 of the 19 districts). Thus, even if, sometime this decade, Democratic performance improved by 10 percentage points and Republican performance worsened by 10 points in every precinct in the State – giving Democrats a landslide victory in the popular vote statewide – Republicans would still hold a majority of the congressional seats.

Although appellees' motions rely heavily on *O'Lear v. Miller*, 222 F. Supp. 2d 850 (E.D. Mich.) (three-judge court), *summarily aff'd*, 123 S. Ct. 512 (2002), in several key respects Pennsylvania's partisan gerrymander is more extreme than the Michigan plan considered in that case. The disproportionality in congressional seats here is greater than in *O'Lear*, both as alleged in the plaintiffs' complaints and as confirmed by actual election results (results that were not available to the Court when it summarily affirmed the *O'Lear* district court's judgment over the dissenting votes of Justices Stevens and Breyer, *see O'Lear v. Miller*, 123 S. Ct. 512 (2002)). Unlike in *O'Lear*, moreover, the District Court in this case made specific factual findings that, in enacting the Pennsylvania congressional plan, the General Assembly "jettison[ed] every . . . neutral non-discriminatory redistricting criteri[on]," other than avoiding population deviations among districts. J.S. App. 9a n.3. Reviewing the nearly identical map earlier in this case, the District Court concluded that the State's asserted nonpartisan justification for the population deviations in that plan were "mere pretext," *id.* at 53a, noting that the map "fail[ed] most miserably" in treating incumbents of both parties evenhandedly. *Id.* at 55a. In addition, when compared to the

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[5] Those data also include one race in which a Democratic congressional candidate ran uncontested.

districts challenged in *O'Lear*, the congressional districts in the Pennsylvania plan are more bizarrely shaped, *id.* at 164a-166a, are less compact, *id.* at 150a, 159a, and split far more counties and municipalities, *id.* at 150a, 152a-158a. Accordingly, this case presents the Court with an ideal opportunity to clarify and revitalize the partisan-gerrymandering claim.

Furthermore, as discussed in appellants' jurisdictional statement, the Court's recent racial-gerrymandering decisions shed additional light on political-gerrymandering claims. J.S. at 23-25. Where, as here, a State draws bizarrely shaped congressional districts that maximize partisan advantage to the exclusion of all legitimate redistricting criteria, the Court's *Shaw* jurisprudence is instructive. *See, e.g., Shaw v. Reno*, 509 U.S. 630, 644 (1993); *Miller v. Johnson*, 515 U.S. 900, 913 (1995). This is not to say, as appellees fear, that the two classes of claims are fully coextensive; nor do appellants suggest that "'the intentional drawing of district boundaries for partisan ends . . . violates the equal protection clause *in and of itself*.'" Executive Officers' Br. at 10 (citation omitted and emphasis added). But *Shaw* points the way to how, under the Equal Protection Clause, courts should differentiate between constitutional and unconstitutional degrees of political bias in maps – by focusing on whether other districting criteria were sacrificed to a paramount partisan objective.

Similarly, although the Court has not yet applied Article I, Section 4 of the U.S. Constitution to political-gerrymandering claims, several recent decisions of this Court confirm that States may not use their limited Article I powers to dictate the outcome of congressional elections. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 833-34 (1995); *Cook v. Gralike*, 531 U.S. 510, 523 (2001). Although appellees suggest that Article I, Section 4 "does not, by its terms, forbid the States from doing anything," Executive Officers' Br. at 13, appellees concede, as they must, that the Court has invalidated State laws that "exceed[] the [constitutional] authority conferred" by that provision, *see id.*

at 13 (citing *Cook, supra*). With passage of Act 34, the Pennsylvania General Assembly exceeded its narrow constitutional authority in this area.

II. THERE ARE NO VALID ALTERNATIVE BASES FOR AFFIRMING THE DISTRICT COURT'S DECISION.

The Presiding Officers seek to defend the judgment below on two alternative grounds not accepted by the District Court. Neither provides an adequate basis for affirmance.

A. Appellants Meet *Bandemer*'s Requirement of an "Identifiable Political Group."

First, the Presiding Officers ask this Court to rule, contrary to the District Court's decision, *see* J.S. App. 32a, that appellants do not constitute an "identifiable political group" for purposes of alleging a valid partisan-gerrymandering claim. Presiding Officers' Br. at 22-25. According to Presiding Officers, the group harmed in this case – defined as voters who actually vote for Democratic candidates in general elections for Congress – cannot constitute a salient political group under *Bandemer* because of alleged "cross-over" and "split-ticket" voting by registered Democrats in Pennsylvania. *Id.* at 25. The District Court's resolution of this issue, however, was correct, and neither precedent nor logic suggests a contrary result.

Initially, *Bandemer* itself belies any claim that this case does not involve an identifiable political group. There, the Court found that the plaintiffs whom the district court had described as "clearly belong[ing] to a politically salient class, those who *align* themselves with the Democratic Party," *Bandemer v. Davis*, 603 F. Supp. 1479, 1492 (S.D. Ind. 1984) (three-judge court) (emphasis added) – had stated a justiciable claim. *Bandemer*, 478 U.S. at 124. In *Bandemer*, this Court considered the same type of class as

that identified in this case – one based on how people vote, rather than on their party registration – and found that such claims were cognizable under the Equal Protection Clause.

Moreover, the fact that some *registered* Democrats occasionally vote for Republican candidates, *see* Presiding Officers' Br. at 25, hardly means that plaintiffs here are not an identifiable political group. *Cf. Republican Party of North Carolina v. Martin*, 980 F.2d 943, 956 n.23 (4th Cir. 1992) (holding that registered Republicans and Democrats who allege that they "have and will continue to vote for Republican candidates" have alleged "a sufficient degree of cohesiveness . . . to withstand a motion to dismiss" a partisan-gerrymandering claim). It is voter performance, not voter registration, that establishes a politically salient class. *See Easley v. Cromartie*, 532 U.S. 234, 244-45 (2001).

Finally, the simple political realities of this case bolster the notion that those tending to vote Democratic form a politically salient class for purposes of a *Bandemer* claim. Recognizing the importance of voting patterns, rather than voter registration, the General Assembly created meandering districts with the single-minded goal of maximizing Republican advantage in the State's congressional delegation. In so doing, they treated Democratic voters as an identifiable group that needed to be "packed" into a handful of overwhelmingly Democratic districts and "fractured" elsewhere to maximize bias in favor of Republican candidates. It ill behooves the Presiding Officers, having orchestrated such a scheme, to come into court and deny that their intended victims are "identifiable."

B. Political-Gerrymandering Claims Should Remain Justiciable.

Presiding Officers offer no innovative or compelling argument to support their request that this Court overrule *Bandemer*. *See* Presiding Officers' Br. at 25-29. Rather, Presiding Officers simply rehash arguments from a long-settled debate. The law in this area is clear – political-gerrymandering claims are justiciable – and Presiding

Officers provide no reason for this Court to revisit that conclusion.

Presiding Officers rely on a purported lack of judicially manageable standards and a fear of political instability in support of their request to overturn *Bandemer*. The majority in *Bandemer*, however, considered and rejected that very argument. *See Bandemer*, 478 U.S. at 125. That some lower courts since *Bandemer* have confused matters by imposing unattainable requirements on political-gerrymandering claims, *see* J.S. at 18-21, does not impugn the holding of the *Bandemer* majority that such claims are justiciable. As *Bandemer*'s majority opinion made clear, it is certainly possible to adjudicate limited, manageable political-gerrymandering claims that seek "a level of parity between votes and representation sufficient to ensure . . . that majorities are not consigned to minority status." 478 U.S. at 125 n.9. In any event, the *Bandemer* decision has not produced anything like the "havoc" described by Presiding Officers. *See* Presiding Officers' Br. at 27.

Rather, as Judge Richard A. Posner and Judge Adalberto Jordan have recently noted, *see* J.S. 1-3, the greatest source of havoc in this arena today comes from the lack of clarity in the caselaw and from the unchecked ability of partisans to maximize their advantage by running roughshod over the fundamental constitutional principle of majority rule.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted,

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IN THE

Supreme Court of the United States

RICHARD VIETH, ET AL.,

Appellants,

v.

ROBERT C. JUBELIRER, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIEF OF POLITICAL SCIENTISTS BERNARD GROFMAN AND GARY JACOBSON AS *AMICI CURIAE* IN SUPPORT OF NEITHER PARTY

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Bernard N. Grofman, *Criteria for Redistricting: A Social Science Perspective*, 33 U.C.L.A. L. Rev. 77 (1985) 2n

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INTEREST OF *AMICI CURIAE*[1]

Bernard Grofman is a specialist on redistricting and voting rights, with numerous books and articles on these topics. Gary Jacobson is a specialist on Congress and congressional elections, with numerous books and articles on these topics. Both are Professors of Political Science at the University of California, where each has taught for more than twenty years. Both are Fellows of the American Academy of Arts and Sciences.[2]

This *amicus* brief takes no position on the question of whether or not the congressional plan in Pennsylvania is an unconstitutional political gerrymander, nor even on the standards under which claims of partisan gerrymandering ought to be adjudicated. Rather, *amici* simply wish to bring to the Court's attention some important changes in American electoral politics, especially with regard to Congressional elections, that we believe directly bear on the issues currently before the Court. The evidence for the changes that we highlight is readily available in the public record (e.g., election results and patterns of roll-call voting in the U.S. House of Representatives), and we believe the evidence for the

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[1] Pursuant to Rule 37.3 of the Rules of this Court, all parties have consented to the filing of this brief and the parties' letters of consent have been filed with the Clerk of the Court. Pursuant to Rule 37.6 of the Rules of this Court, *amici* state that no counsel for a party has written this brief in whole or in part, and that no person or entity, other than the *amici curiae* or their counsel, has made a monetary contribution to the preparation or submission of this brief.

[2] A summary of the qualifications and affiliations of the respective *amici* is provided in the appendix to this brief. *Amici* file this brief solely as individuals and not on behalf of the institutions with which they are affiliated.

phenomena to which we call attention is clear and compelling.[3]

SUMMARY OF ARGUMENT

Amici wish to alert the Court to the fact that the potential overall impact of partisan bias[4] attributable to redistricting has increased greatly in the last round of redistricting over what was found in earlier redistricting periods. This greater importance of redistricting bias stems from a combination of three factors.

The first factor is the nearly even partisan balance nationwide, which is reflected in the unusually close balance (by historical standards) between Republicans and Democrats in the U.S. House of Representatives.

The second factor is the small number of competitive seats in the U.S. House of Representatives left after the redistrictings that followed release of the 2000 Census data -- accentuating a trend that was already readily visible following the last several reapportionment cycles.

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[3] Our focus will be limited to the U.S. House of Representatives, but we would note that we believe similar statements about changes in the importance of redistricting could be made at the state level in a number of States.

[4] The concept of partisan bias is discussed in Bernard Grofman, William Koetzle, and Thomas Brunell, *An Integrated Perspective on the Three Potential Sources of Partisan Bias: Malapportionment, Turnout Differences, and the Geographic Distribution of Party Vote Shares*, 16 Electoral Studies 457-470 (1997). For the relationship between partisan bias and political gerrymandering, see Bernard N. Grofman, *Criteria for Redistricting: A Social Science Perspective*, 33 U.C.L.A. L. Rev., 77, 117-119 (1985). More general issues are discussed and competing points of view considered in Bernard N. Grofman (ed.), *Political Gerrymandering and the Courts* (New York: Agathon Press 1990).

The third factor is the dramatic rise in ideological polarization between the parties, which is reflected in voting patterns in Congress and in the congressional electorate nationwide.

Below we present evidence in support of each of our observations about partisan balance, district level competitiveness, and ideological polarization, comparing the situation in 2002 with what had been characteristic of previous redistricting eras, and then we explain how these factors have contributed to the increasing significance of partisan bias in redistricting.

ARGUMENT

THE POTENTIAL IMPACT OF PARTISAN BIAS IN REDISTRICTING HAS GREATLY INCREASED

1. Partisan Balance

The nearly even partisan balance nationwide is demonstrated, among other things, by the vote in the presidential election of 2000 and the near tie in the U.S. Senate over the past few years. As Figure 1 shows, the partisan balance in the U.S. House of Representatives became unusually close after 1994 and has remained so for a decade.

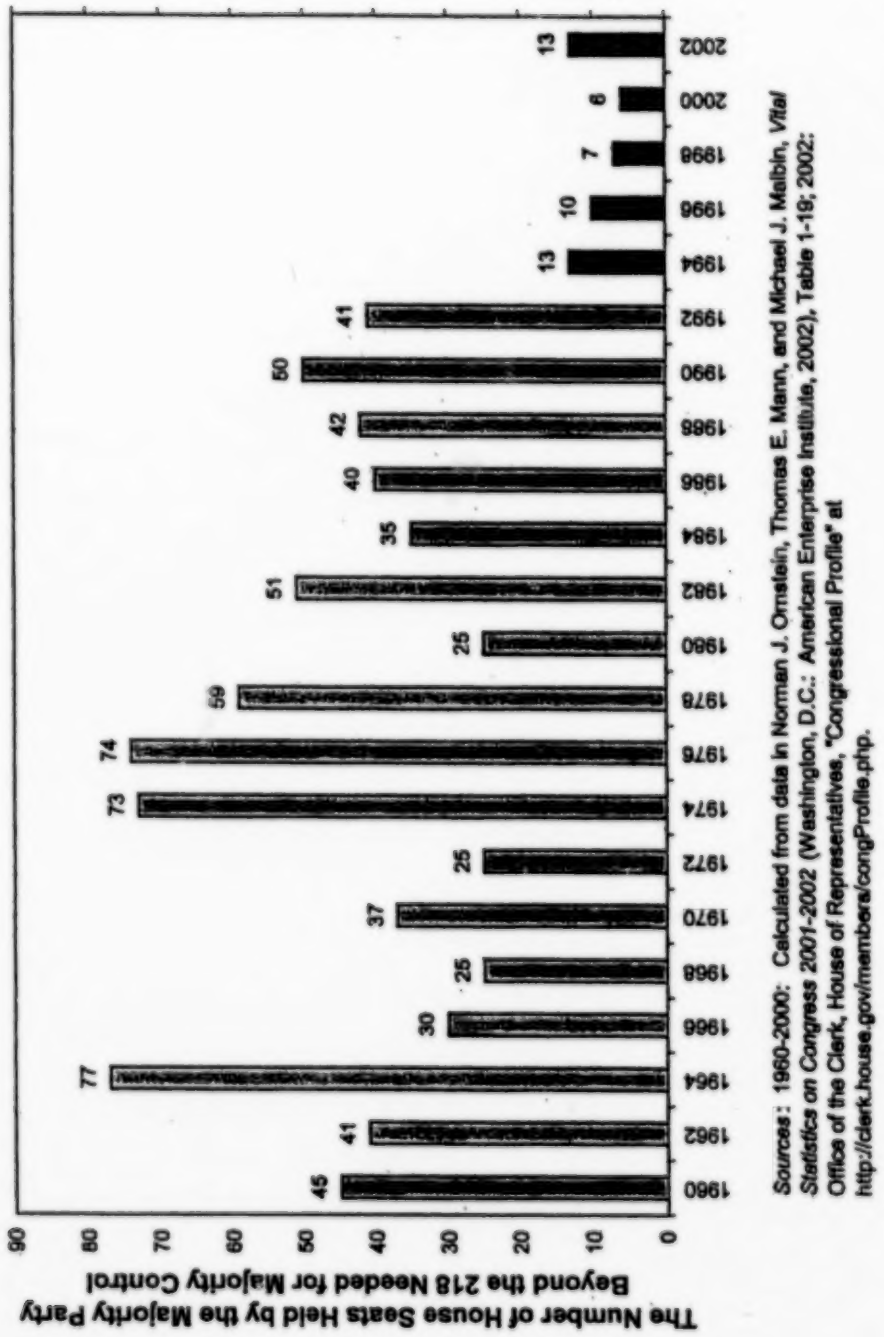

Figure 1. The Size of House Majorities, 1960-2002

Sources: 1960-2000: Calculated from data in Norman J. Ornstein, Thomas E. Mann, and Michael J. Malbin, *Vital Statistics on Congress 2001-2002* (Washington, D.C.: American Enterprise Institute, 2002), Table 1-19; 2002: Office of the Clerk, House of Representatives, "Congressional Profile" at http://clerk.house.gov/members/congProfile.php.

2. District Level Competitiveness

Even while the overall partisan balance in the House has narrowed, the number of competitive House districts has tended to decline. Measured by the percentage of seats won either with less than 55 percent (Figure 2) or less than 60 percent (Figure 3) of the major party vote, the trend in the number of competitive seats has been downward since 1960. Figure 4, which displays a more subjective but perhaps more nuanced estimate of the level of competition in House races since 1980, supports the same conclusion.

Notice that years ending in "2," following wholesale reapportionment, have in the past tended to produce relatively large numbers of competitive seats (1972 is the exception). The low number of competitive districts in 2002 is thus all the more noteworthy, and if the pattern of declining competition after reapportionment observed in the 1960s, 1980s, and 1990s recurs, then competitiveness throughout the remainder of the decade will fall to record lows.[5]

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[5] *See also* Gary C. Jacobson, *Terror, Terrain, and Turnout: Explaining the 2002 Midterm Elections*, 118 Political Science Quarterly 1, 9-10 (2003).

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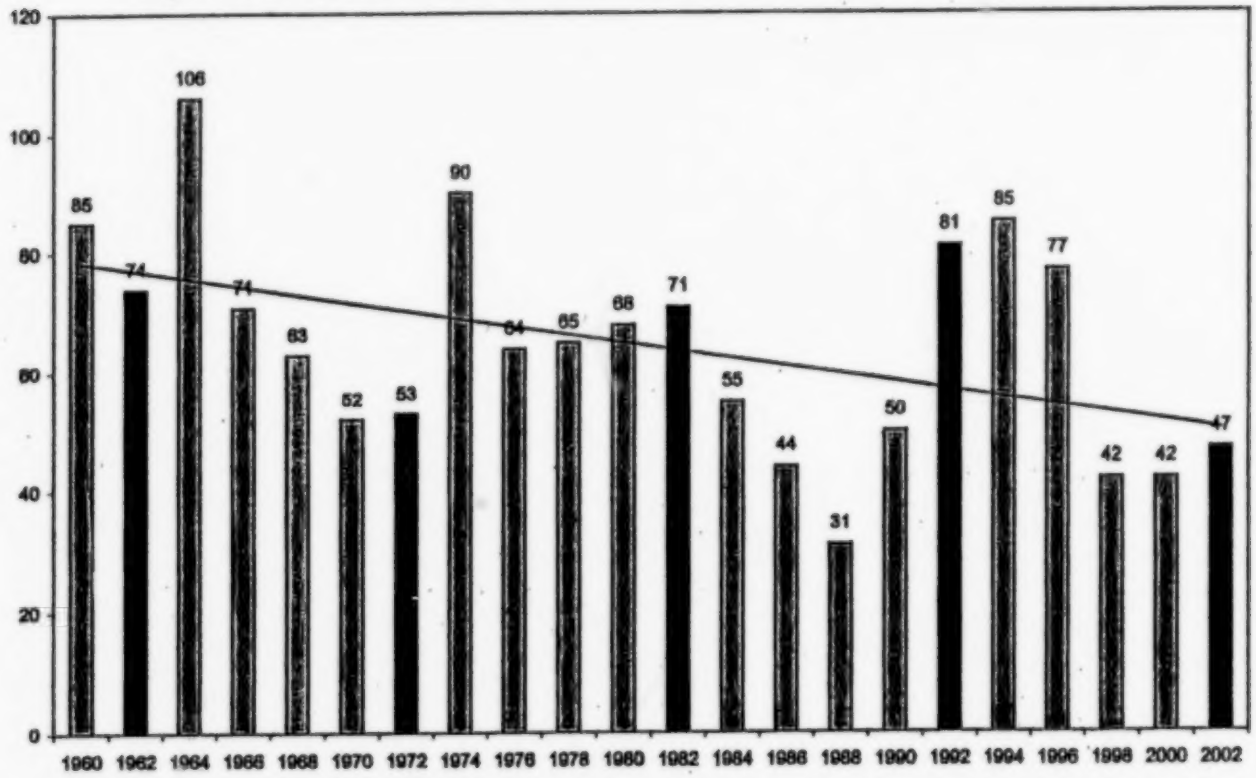
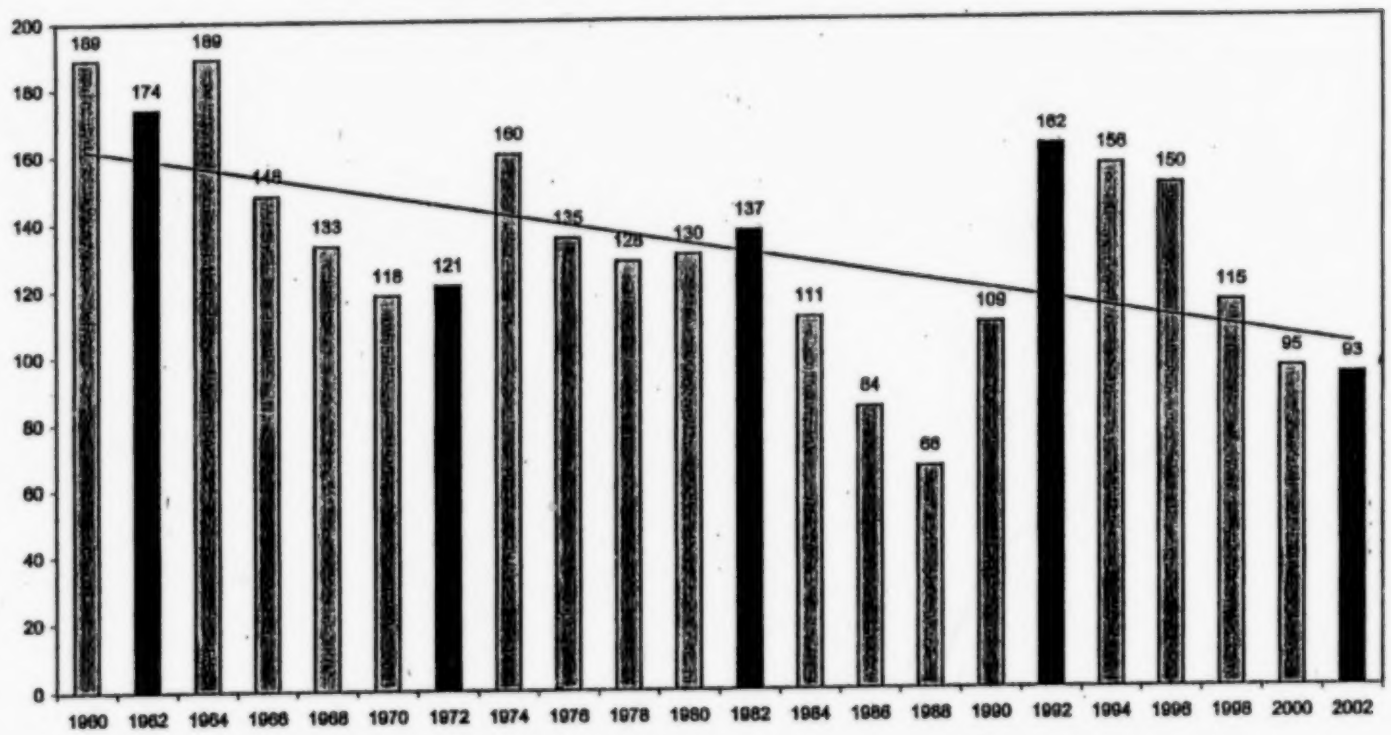
Figure 2. House Seats Won With Less than 55% of the Major Party Vote, 1960-2002



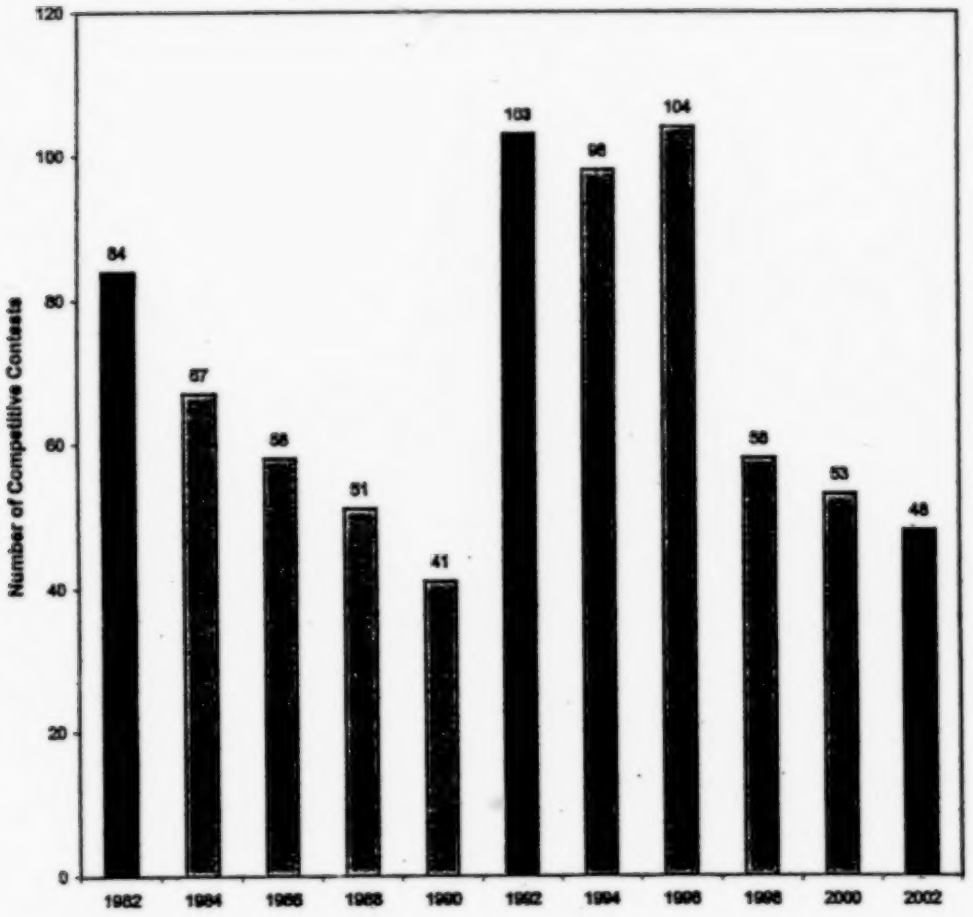
Sources: Compiled by Gary Jacobson from data in *Congressional Quarterly's Guide to U.S. Elections*, 2nd. Ed. (Washington, D.C.: Congressional Quarterly, 1985); Michael J. Dubin, *United States Congressional Elections, 1788-1997* (Jefferson, NC: MacFarland & Company, 1998); and U.S. Federal Election Commission, "Recent Election Results," at http://www.fec.gov/elections.html.

Figure 3. Seats Won with Less than 60 Percent of the Major Party Vote



Sources: Compiled by Gary Jacobson from data in *Congressional Quarterly's Guide to U.S. Elections*, 2nd. Ed. (Washington, D.C.: Congressional Quarterly, 1985); Michael J. Dubin, *United States Congressional Elections, 1788-1997* (Jefferson, NC: MacFarland & Company, 1998); and U.S. Federal Election Commission, "Recent Election Results," at http://www.fec.gov/elections.html.

Figure 4. Competitive House Elections, 1982-2002



Note: Competitive races are those classified by *Congressional Quarterly* as "tossups" or "leans Democratic (Republican); uncompetitive races are those classified as "safe" or "Democrat (Republican) favored."

Sources: *Congressional Quarterly Weekly Report*, 9 October 1982, 2481-2810; 13 October 1984, 2505-2509; 11 October 1986, 2399; 15 October 1988, 2879; 13 October 1990, 3279; 24 October 1992, 3356-3362; 22 October 1994, 3006-3010; 19 October 1996, 2965-2969; *CQ Weekly*, 24 October 1998, 2873; 21 October 2000, 2460; 26 October 2002, 2795.

3. Ideological Polarization

(a) Overall party polarization in the U.S. House of Representatives

The increasing partisan polarization of Congress is well documented. It is most clearly depicted in the Poole-Rosenthal DW-Nominate index, summarized in Figure 5. DW-Nominate scores are calculated from all non-unanimous roll call votes cast by House and Senate members; the score locates each member for each Congress on a liberal-conservative scale that ranges from –1.0 to 1.0; the higher the score, the more conservative the member. This is a standard and well-accepted measure of the ideological patterns of voting in the U.S. Congress.[6] On average, Democrats have become increasingly liberal since 1960, while the Republicans have become increasingly conservative. The result is that by the 106th Congress, ideological divisions between parties in the House and Senate were widest for the entire time period depicted and, indeed, according to the Poole-Rosenthal Index, wider than at any time since before World War I. The House party coalitions also became increasingly homogeneous, as shown by the decrease in the dispersion (the standard deviation) of scores around the party means. Figure 6 shows that the gap between the House party means grew from .49 to .86 on this 2-point scale over these decades.[7]

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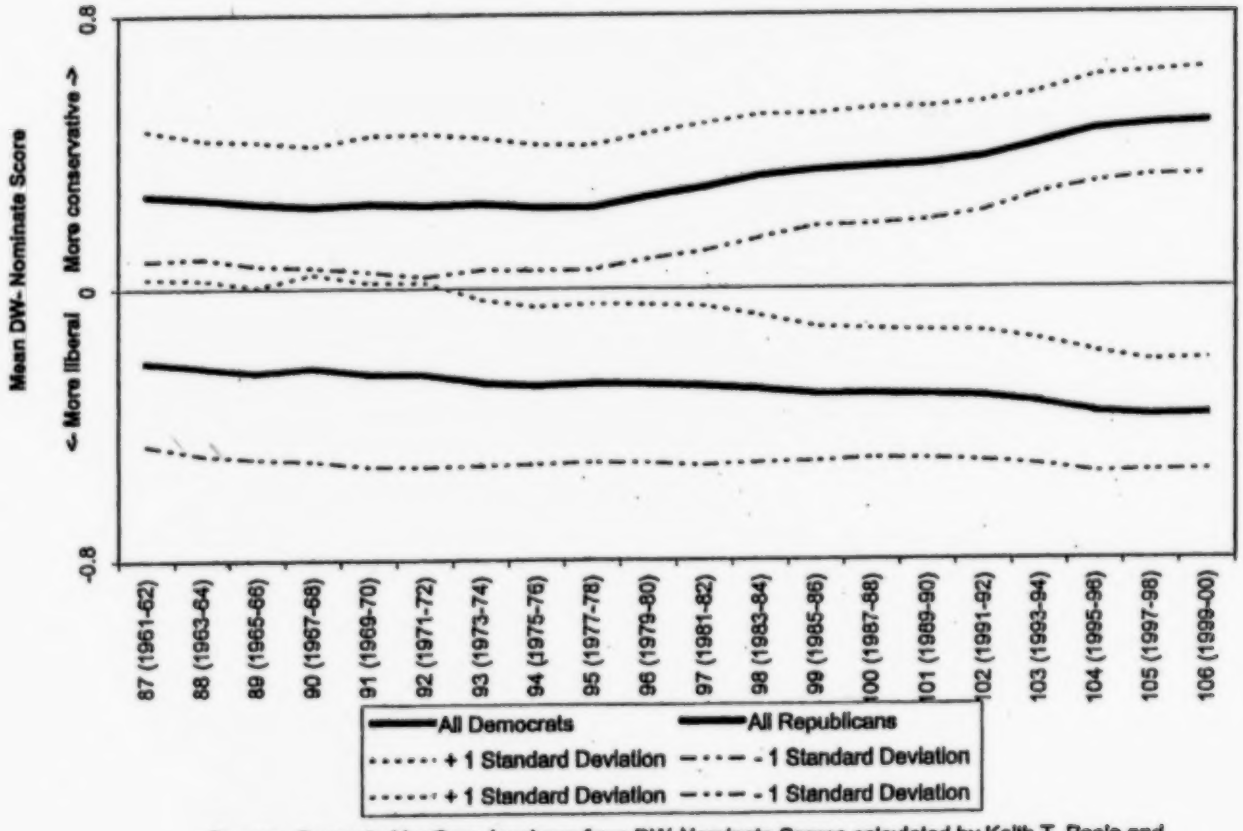
[6] Keith T. Poole and Howard Rosenthal, *Congress: A Political-Economic History of Roll Call Voting* (New York: Oxford University Press, 1999), chs. 2-4 and Appendix A.

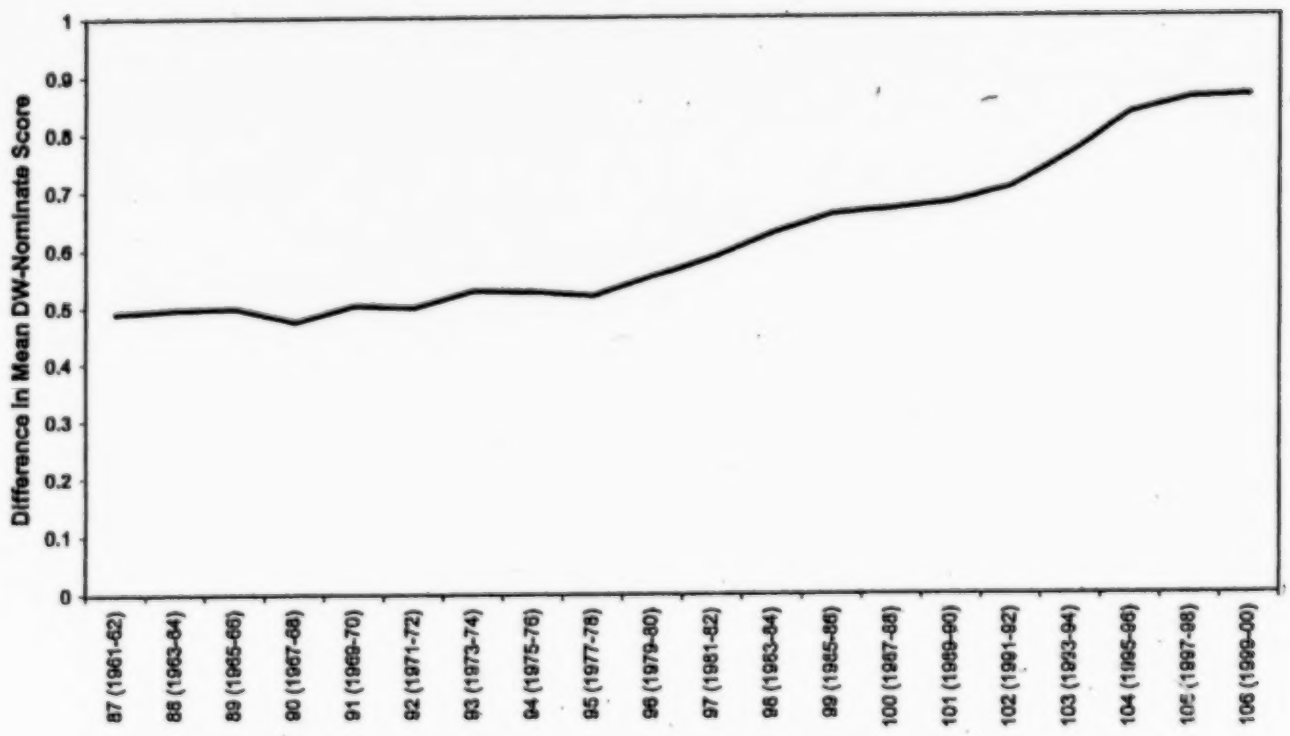
[7] For an alternative approach leading to essentially the same conclusion, see Bernard Grofman, William Koetzle, Samuel Merrill, and Thomas Brunell, *Changes in the Location of the Median Voter in the U.S. House of Representatives, 1963-1996*, 106 Public Choice 221-232 (2001).

Figure 5. Increasing Partisan Polarization and Homogeneity in the U.S. House



Source: Computed by Gary Jacobson from DW-Nominate Scores calculated by Keith T. Poole and Howard Rosenthal, available at http://voteview.uh.edu/default_nomdata.htm.

Figure 6. Ideological Difference Between the House Parties, 87th Through 106th Congresses



Source: Computed by Gary Jacobson from DW-Nominate Scores calculated by Keith T. Poole and Howard Rosenthal, available at http://voteview.uh.edu/default_nomdata.htm.

(b) Polarization of the partisan basis of electoral competition in the House

Another important electoral trend has been the increasing partisan polarization of the two House parties' electoral bases. This can be measured by using the district level vote for president as an indicator of district partisanship. Figure 7 displays the widening disparity in the electoral bases of House Republicans and Democrats since 1960.[8] Back in 1980, for example, the vote for Ronald Reagan was only 11.5 percentage points higher in districts won by Republicans than in districts won by Democrats. After a steep increase between 1992 and 2002, the difference is now nearly 20 percentage points. The redistricting that occurred after the 2000 census extended this trend. Increasing partisan polarization in Washington thus reflects the partisan polarization of House constituencies, which in turn is in part a consequence of redistricting.[9]

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[8] Figure 7 displays the difference in the presidential vote between districts that elected Republicans to the House and districts that elected Democrats. The data for non-presidential years are based on the vote in the previous presidential election two years earlier; where redistricting has occurred, the presidential vote has been reallocated to the new congressional districts. Reallocated presidential vote data were not available for the 1962 and 1966 districts, so these years are omitted.

[9] *See* Gary C. Jacobson, *Terror, Terrain, and Turnout: Explaining the 2002 Midterm Elections*, 118 Political Science Quarterly 1, 9-10, 16-17 (2003).

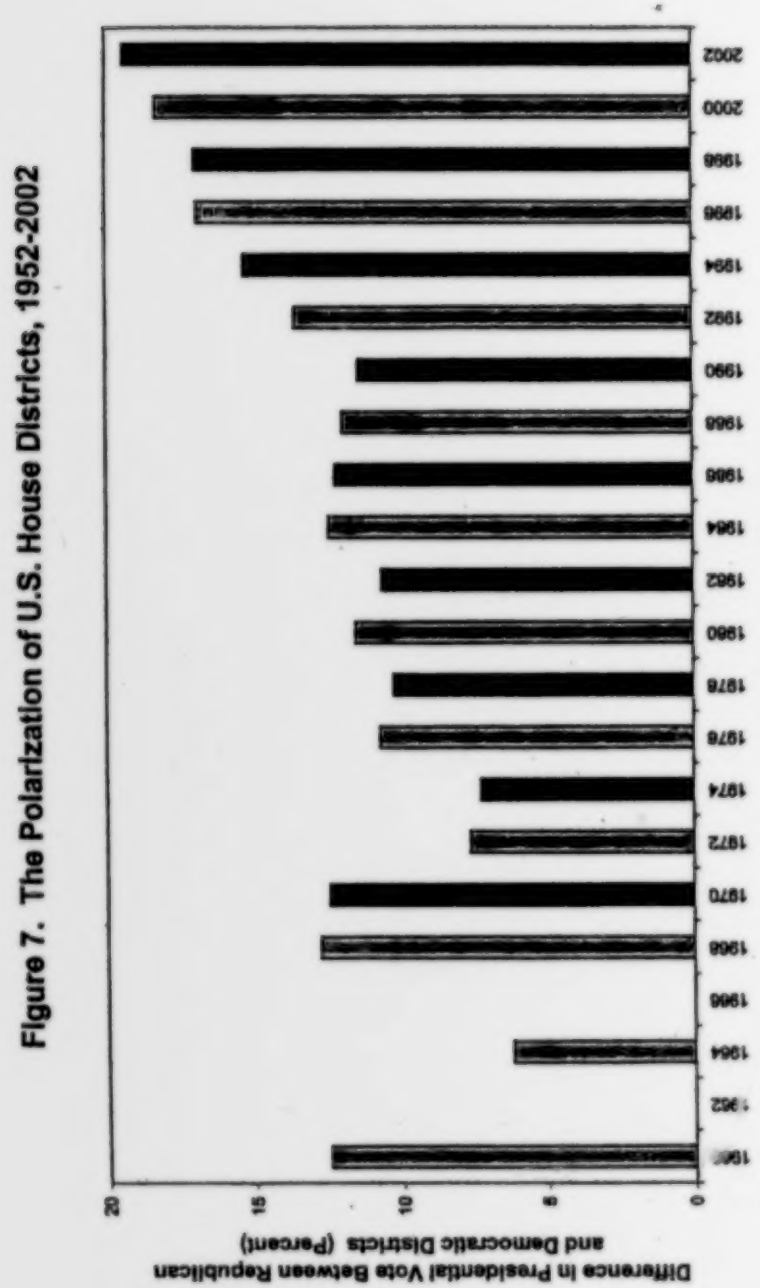

Figure 7. The Polarization of U.S. House Districts, 1952-2002

Note: Data for 1962 and 1966 are unavailable because of redistricting. In other midterms following reapportionments, the presidential vote from the previous presidential election has been recalculated for the new districts.

Source: Gary C. Jacobson, "Terror, Terrain, and Turnout: Explaining the 2002 Midterm Elections," *Political Science Quarterly* 118 (Spring, 2003), p. 17.

4. The Resulting Increasing Significance of Partisan Bias in Redistricting

A closely divided partisan balance and the absence of competitiveness at the district level mean that even a rather small partisan bias, even if no greater than what had been seen in previous decades, can now be determinative of which party controls the House over the course of a decade. If the partisan margin of control in the House were at the levels observed in the period from 1960 to 1990 (25 to 77; see Figure 1, above), then net nation-wide partisan redistricting effects on the order of 10 House seats or fewer might not matter that much. But, with the partisan balance in the House now so close, every seat counts.[10] Moreover, the long-run importance of a redistricting plan that affects only a handful of House seats is magnified by the fact that the "denominator" (those seats that might potentially change in partisan control over the course of a decade) is much smaller than it has ever been, i.e., House redistrictings after the 2000 Census left most House seats essentially non-competitive, and thus, effectively, "out of play" for the rest of the decade.

[10] The parties certainly act as if they believe this. For the 2000 round of redistricting, the national offices of both political parties developed extensive outreach campaigns to shape the state-level redistricting processes, with particular concern for affecting outcomes in the U.S House of Representatives. In 2003, for example, we have seen attempts to redraw lines for the U.S. House districts in Texas, a State in which partisan control of the redistricting process had shifted in 2002.

The dramatic rise in ideological polarization between the parties, which itself is to a significant extent the result of redistricting practices,[11] greatly increases the perceived stakes in control of Congress. The growing partisan rancor and decline in bipartisan compromise observed in Congress over the past decade means that the difference between a party's winning 49 percent and 51 percent of House seats is now vast. Given the absence of a "moderating center" in either party, the party that is in the minority is truly the "out" party, having little or no influence on outcomes. A minority party in the House can be effectively shut out of the political process.[12]

As a result of the close partisan balance, the dearth of competitive seats, the greater ideological polarization between the parties and the polarization of House constituencies, the drawing of House districts after the 2000 Census has had, and is likely to continue to have, a greater impact on partisan control of the U.S. House over the course of this decade than had earlier redistrictings.

[11] It is our view that the increased demographic and political homogeneity among districts -- changes related to redistricting practices developed since *Baker v. Carr*, 369 U.S. 186 (1962) -- has contributed substantially both to reduced competitiveness at the district level and to increased polarization in the House. Even if greater political homogeneity is merely a byproduct of a bipartisan gerrymander designed to protect incumbents, it can contribute to partisan polarization. Incumbents representing politically homogeneous constituencies need not appeal to independents or voters of the other party to win reelection and so are free to adopt relatively extreme ideological positions.

[12] If, on the basis of the districts as they have been configured, a party can reasonably expect to be in majority control of a legislature for the course of a decade, then almost certainly its leaders will be less inclined to engage in political compromise with members of the other party.

CONCLUSION

As the Court revisits the question of the conditions under which a partisan gerrymander rises to the level of a constitutional violation, *amici* respectfully urge the Court to bear in mind the important practical changes in American electoral politics that we have identified above.

Respectfully submitted,

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APPENDIX

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No. 02-1580

IN THE

Supreme Court of the United States

RICHARD VIETH, *et al.*

Appellants,

v.

ROBERT C. JUBELIRER and JOHN M. PERZEL, *et al.*

Appellees

On Appeal from the United States District Court
For the Middle District of Pennsylvania

BRIEF OF AMICUS CURIAE, THE DEMOCRATIC LEADER OF THE SENATE OF PENNSYLVANIA, IN SUPPORT OF APPELLANTS

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I. INTEREST OF AMICUS CURIAE

This Amicus Curiae brief is filed pursuant to Rule 37 of the Rules of this Court in support of Appellants. Counsel for both Appellants and Appellees have consented to the filing of this brief and their consent letters have been filed with the Clerk of the Court. [1]

Amicus Curiae, the Honorable Robert J. Mellow, the Democratic Leader of the Senate of the Commonwealth of Pennsylvania, fully supports the position of Appellants and urges this Court not only to reaffirm its decision in *Davis v. Bandemer*, 478 U.S. 109, 106 S.Ct. 2797 (1986), stating that a partisan gerrymandering claim raised in the context of redistricting is a "justiciable controversy," but also to clarify the threshold for bringing such claims.

As a voter, taxpayer, candidate, and as an elected official who has sworn to protect the interests of this Commonwealth in securing an orderly, efficient, and fair election process, Amicus has an obvious and substantial interest in Congressional Reapportionment in Pennsylvania.

Amicus has served as a member of the Senate of Pennsylvania for more than 30 years; almost 14 years as Democratic Leader and 18 months as President Pro Tempore. Additionally, Amicus has participated actively in the 1980, 1990 and 2000 reapportionment process, twice having served as the Senate Democrats' representative on the Pennsylvania Legislative Reapportionment Commission. Over that period of time, the level of partisanship, not only in the redistricting

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[1] Pursuant to Supreme Court Rule 37.6, Amicus affirms that no counsel for any party in this case in whole or in part authored this brief in whole or in part; and furthermore, that no person or entity has made a monetary contribution for the preparation or submission of this brief.

process but also in the Pennsylvania political arena in general, has risen so dramatically that the citizens of the Commonwealth have suffered as a result. Indeed, following the most recent census, as the result of the unprecedented partisan gerrymandering by the Republican Party in the Pennsylvania Legislature, the majority of voters have been ignored and relegated to minority status.

Although Appellants sought relief in the present case from this gerrymandering, the lower court dismissed the gerrymandering claim, applying a standard that makes it effectively impossible for parties to establish a cause of action.

Amicus seeks to provide this Court with an important and unique perspective on the Pennsylvania legislative process and the politically inspired maneuvers that characterized the 2000 congressional redistricting process. Amicus thus seeks to give this Court a clearer picture of the increasingly partisan nature of the legislative process and the congressional redistricting process, which has resulted in the establishment of barriers that effectively block equal access to the electoral and legislative processes for Democratic members of the General Assembly and their constituents. The 2000 redistricting plan seriously harms the Pennsylvania Democratic Party's ability to fully represent the interest of its constituencies. In fact, as a result of the Republican drawn plan at issue here, Democrats are relegated to minority status in the Congressional delegation (potentially only 5 of the 19 seats) for the foreseeable future.

Finally, Amicus describes the legislative redistricting process, in which a bipartisan commission draws a redistricting plan. This process, although less partisan than the congressional redistricting process, has become more partisan over the last three cycles of redistricting.

A. THE LEGISLATIVE HISTORY REVEALS AN INCREASE IN POLITICAL PARTISANSHIP IN THE REDISTRICTING AND LEGISLATIVE PROCESS

1. Partisan Congressional Redistricting Plan

Based on the 2000 census, Pennsylvania lost two Congressional seats, decreasing the number of congressional seats from 21 to 19. As a result of this loss of two seats, and shifts in population during the 1990s that rendered the congressional districts used during the 1990s substantially unequal in population, Pennsylvania had to draw new congressional districts in order to comply with the "one person, one vote" rule.

On January 3, 2002, the General Assembly passed a Conference Committee Report of Senate Bill 1200, a congressional redistricting bill originally introduced by Republican members of the Senate on December 10, 2001.

Consideration of SB 1200 was done in true partisan fashion. Amicus, along with other members of the Senate, expressed their concerns during its consideration, noting on the evening of December 10, 2001 that

> "it was after the hour of 5 o'clock this evening before we really had an opportunity to look at a map and to go through congressional reapportionment, and now we are being asked to vote on that same map that I am sure took many months to put together, in a period of just about 5 hours." *Senate Journal* 1193 *(December 10, 2001)* (statement of Senator Mellow).

Amicus further went on to state,

> "Mr. President, we are very upset about the lack of opportunity to present what we think would be important issues into this particular map. Mr.

President, we feel that millions and millions of voters in Pennsylvania, based on this map, will be disenfranchised. And I do not think there has ever been a clear indication to the people of Pennsylvania that when you have one party in control in the General Assembly, when you have one party control in the Senate, when you have one party control in the House of Representatives, and you have the same party controlling the Chief Executive Office, that absolute power will corrupt absolutely." *Senate Journal* 1198 *(December 10, 2001)* (Statement of Senator Mellow)

These same sentiments were echoed by Senator Michael O'Pake when he stated that

"[n]o one who looks at this plan can have any doubts. It has only one goal, to put as many Republican Members in Congress as possible, probably 13 or 14 Republicans, and only 5 or 6 Democrats from Pennsylvania. While almost 500,000 more Pennsylvanians regard themselves as Democrats than Republicans, and despite the fact that many years of very important seniority and experience will go into the garbage can when eight Democratic Congressmen are jammed into four district, we are asked to vote on a plan that so disfigures the interests of Pennsylvanians of the Commonwealth and of its communities that the term gerrymander would be a complement to this monstrosity." *Senate Journal* 1199 *(December 10, 2001)* (Statement of Senator O'Pake)

On January 7, 2002, Governor Schweiker signed Senator Bill 1200 into law as Act 1 of 2002. This plan changed the current congressional representation from 11 Republicans and 10 Democratic seats to a plan that resulted

in the election of 12 Republicans and only 7 Democratic representatives in the 2002 congressional elections. Act 1, and now Act 34, could have resulted in 14 Republican and 5 Democratic seats in subsequent elections. Act 1 was challenged in both the state and federal courts. The Pennsylvania Supreme Court upheld it against a challenge that it violated the Pennsylvania Constitution, *Erfer v. Commonwealth*, 568 Pa. 128, 794 A.2d 325 (2002), but the federal court invalidated Act 1 on the grounds that it violated the United States Constitution, *Vieth v. Commonwealth*, 195 F. Supp. 2d 672 (M.D.Pa.) (2002), *app. dismissed sub. nom. Jubelirer v. Vieth*, 123 S.Ct. 67, (2002) and *Schweiker v. Vieth*, 123 S.Ct. 68 (2002). The federal court explained that Act 1 violated the "one-person, one-vote" rule because the plan's deviation of 19 people was avoidable and the reason offered by defendants to justify the deviation – a purported desire to avoid splitting precincts – was a mere pretext. The federal court did not, however, impose a new plan. Rather, the court gave the Pennsylvania General Assembly until April 29, 2002, to enact a revised congressional redistricting plan.

In light of the District Court's order, on April 9, 2002, the Republicans in the Senate of Pennsylvania quickly introduced Senate Bill 1234, a congressional redistricting plan designed to remedy the deficiencies in Act 1. A subsequent amendment, which was drafted without any Democratic participation and with very little notice of its content, was offered on April 15, 2002. The Senate Journal of April 15, 2002, reveals that the Senate Democrats expressed concern that they were not given enough time to review this amendment. One Democratic Senator accurately noted that this new plan still pitted two Democratic incumbents against each other in one district and paired a Republican Incumbent and Democratic incumbent running in another district against each other in a district favoring the Republican. Finally, this plan creates a new district, in a

Republican area of the state, where no incumbent currently resides. *Senate Journal, 1601,(April 15, 2002).* Democrats in the Senate of Pennsylvania proposed a redistricting plan as an amendment to Senate Bill 1234. The Democratic plan paid attention to the Court's concern with compactness, it respected municipal boundaries and had fewer municipal splits than the Republican plan, it preserved the core of prior districts and it avoids contests between incumbent Congressmen. *Senate Journal 1610 (April 15, 2002).* The Senate's Republican majority voted down the Democratic alternative by a party-line vote. *Senate Journal 1611-1612 (April 15, 2002).* This bill was sent to the House for consideration.

On April 17, 2002, the Senate passed House Bill 2545, with a Republican congressional redistricting amendment. Both the amendment and the bill passed on a straight party –line vote. As a result of the amendment, HB 2545 was identical to SB 1234, which was passed by the Senate on April 15, 2002. The House subsequently passed House Bill 2545, as amended, which was signed into law and became Act 34. *Senate Journal 1654-1655 (April 17, 2002).*

2. Legislative Reapportionment Commission

The Pennsylvania Constitution provides for the members of the Legislative Reapportionment Commission, which is established after each decennial census for the purpose of "reapportioning the Commonwealth.[2]" Section 17(b) further provides for the selection of the fifth member of the commission by the four legislative leaders on the commission. If these members fail to come to an agreement on the fifth member, the fifth member, who will be the Chairman of the Commission, is chosen by a majority of members of the Pennsylvania Supreme Court.

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[2] Art II, Section 17(a)

The Legislative Reapportionment Commission has been in place since Constitutional Convention amended the Pennsylvania Constitution, in 1967. For the first two rounds of reapportionment after 1967, the members of the Legislative Reapportionment Commission were able to select the fifth member. For the Legislative Reapportionment Commissions established after the 1990 and 2000 census, the Pennsylvania Supreme Court chose the fifth member due to the inability of the legislative members to agree on the fifth person. This evidences the escalating partisanship and the knowledge that control of the redistricting process has long-term political advantages. However, Amicus concurs in previous floor remarks that the Commission process has at least allowed the voice of the minority party to be heard and its plans to be considered, unlike the process used to enact Acts 1 and 34.

> "In the Legislative Reapportionment, there was a tremendous amount of dialogue and discussion with the chairman of the Reapportionment Commission. We were given the opportunity to present our plans to the gentlemen. We had an opportunity to discuss them in an open forum and have public hearings. The difference between congressional reapportionment and legislative reapportionment is that in the legislative reapportionment we dealt with it in an upright, open manner. In congressional reapportionment, we [the Democratic Party] have been completely shut out of the process." *Senate Journal,1601 (April 15, 2002).*

II. THE SUPREME COURT SHOULD REAFFIRM ITS DECISION IN *DAVIS V. BANDEMER*, 478 U.S. 109, 106 S.CT. 2797 (1986), WHICH HELD THAT PARTISAN

GERRYMANDERING CLAIMS ARE JUSTICIABLE CONTROVERSIES, AND ENSURE THE VIABILITY OF THE POLITICAL GERRYMANDERING CAUSE OF ACTION BY CLARIFYING THE STANDARD FOR ADJUDICATING SUCH CLAIMS.

A. Summary of the Argument

The Supreme Court should reaffirm its decision in *Davis v. Bandemer*, 478 U.S. 109, 106 S.Ct. 2797 (1986), which held that partisan gerrymandering claims are justiciable controversies not shielded from judicial review by the "political question" doctrine, and clearly articulate the standard an aggrieved party needs to meet to establish such a claim. In the 17 years since the Supreme Court decided *Bandemer*, the level of political partisanship has increased dramatically. In relation to the redistricting process, current technology makes it possible to dilute the voting strength of an entire segment of citizenry via the use of a computer program that surgically manipulates district boundary lines to maximize partisan advantage. Communities, voting blocs and other groups with common political interests that possess strong voting tendencies and stronger voting records can be dissected and rendered impotent through the simple click of a computer mouse.

Undoubtedly, there is a significant level of partisanship in drawing any redistricting plan and this court has recognized that fact on numerous occasions. Importantly, Amicus Curiae does not purport to favor a system of proportional representation. Rather, it is Amicus Curiae's position that the Equal Protection Clause of the United States Constitution does not permit the rights of an entire voting group to be dissected, diluted, or suppressed by the political party controlling a state legislature for the sole purpose of increasing the controlling party's political power.

The *Bandemer* Court recognized the dangers of political gerrymandering in 1986. Those dangers remain and, in fact, are more prevalent today as evidenced by the blatant political gerrymandering that exists in Act 34. However, lower courts interpreting *Bandemer* have created a standard with which aggrieved parties cannot comply, thereby effectively rendering the decision meaningless. Consequently, in addition to reaffirming the justiciability issue, this Court should clarify the burden of proof for adjudicating such claims in a manner that makes the cause of action meaningful. The judgment of the district court dismissing plaintiffs' claim that Act 34 is a partisan gerrymander in violation of the Equal Protection Clause of the United States Constitution should be reversed and remanded to the district court for further proceedings in accordance with this Court's decision.

B. Argument

1. Justiciability of Political Gerrymandering Claims

In *Bandemer*, this Court, relying on cases such as *Baker v. Carr*, 369 U.S. 186 (1962), *Reynolds v. Sims*, 377 U.S. 533 (1964), *Whitcomb v. Chavis*, 403 U.S. 124 (1971), *White v. Regester*, 412 U.S. 755 (1973), and *Gaffney v. Cummings*, 412 U.S. 735 (1973), concluded that the adequacy of representation in the legislative branch of government presents a justiciable issue. In so doing, the Court extended the scope of the Equal Protection Clause to voting members of a political party seeking "the same chance to elect representatives of their choice as any other political group." 478 U.S. at 124. Justifying the extension, the *Bandemer* Court noted the fact that *Gaffney* demonstrated

> "that the claim is submitted by a political group, rather than a racial group, does not distinguish it in terms of justiciability. That the characteristics of the complaining group are not immutable or that the group

has not been subject to the same historical stigma may be relevant to the manner in which the case is adjudicated, but these differences do not justify the refusal to entertain such a case." *Id.* at 125.

The *Bandemer* decision provides a clear and cogent analysis of the applicability of the *Baker v. Carr* "political question" test to political gerrymandering decisions. As set forth in *Baker*,

> "[p]rominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or the lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of the court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question." 369 U.S. at 217.

The *Bandemer* court applied the *Baker* court's "political question" analysis and reasoning and concluded that partisan gerrymandering claims are justiciable controversies. Specifically, the *Bandemer* court found that resolving the claim did not involve the federal judiciary in a matter more properly decided by a co-equal branch of government; there was no risk of foreign or domestic disturbance if the court resolved the issue; and that judicially discernible and manageable standards exist through which political gerrymandering cases could be decided. 478 U.S. at 123. The reasoning of *Baker* and *Bandemer* is equally applicable in this matter.

Notwithstanding the fact that *Baker* and *Bandemer* addressed state legislative redistricting rather than congressional redistricting, the rationale behind *Baker* and *Bandemer* remains persuasive. In fact, lower courts addressing political gerrymandering challenges to congressional redistricting plans have refused to distinguish *Bandemer* because it addressed state legislative redistricting rather than congressional redistricting. *See e.g.*, *Badham v. Eu*, 694 F.Supp. 664 (1988). In so doing, it was noted "nothing in the Bandemer analysis turned on the distinction between congressional redistricting and state legislative redistricting." *Id.* at 668. Consequently, simple application of the *Baker* test to the facts before the court support this Court's continued recognition of political gerrymandering claims as justiciable controversies.

2. Standard for Adjudication

Although the *Bandemer* Court was correct in finding political gerrymandering claims justiciable, application of the test enunciated by the plurality of the Court has proven problematic. The *Bandemer* test requires a plaintiff alleging political gerrymandering to prove both intentional discrimination against an identifiable political group and an actual discriminatory effect on that group. 478 U.S. at 127. To prove discriminatory effect, first a plaintiff must prove an actual or projected history of disproportionate election results. Second, plaintiff must establish "that the electoral system is arranged in a manner that will consistently degrade a voter's, or group of voters', influence on the political process as a whole." *Id.* at 132. It is judicial interpretation of the "political process" prong by lower courts that has resulted in the de facto overruling of *Bandemer*.

The *Bandemer* court recognized the inherent difficulty in applying its test, noting that "[d]etermining when an electoral system has been 'arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole [...] is of necessity a difficult

inquiry." *Id.* at 142-143 (internal citations omitted). That sentiment was echoed in this case where the district court noted that "the recondite standard enunciated in *Bandemer* offers little concrete guidance." *Vieth v. Commonwealth*, 188 F.Supp.2d 532, 544 (2002). As a result of this lack of guidance, lower courts applying the *Bandemer* test have effectively rendered it meaningless by establishing a standard that is virtually impossible to meet. Consequently, this Court needs to craft a standard that will allow plaintiffs to pursue a political gerrymandering claim past the pleadings stage in an appropriate case and thus ensure that *Bandemer* does not create an illusory cause of action.

The fact that political gerrymandering claims are justiciable is irrelevant if complaining parties cannot meet the standard for proving such claims. The *Bandemer* test, and its subsequent interpretation has created such a scenario, as evidenced by the lower court's decision in this matter. Simply, the "political process" prong of the *Bandemer* effects test is overbroad.

In reality, a major political party will never be successful in proving that it has been "essentially shut out of the political process," 478 U.S. at 139-140, because of a redistricting plan. Nor will a redistricting plan wholly prevent a major party from registering voters and organizing. If such proof is required, voters from a major party will never be able to demonstrate that they have been unconstitutionally discriminated against.

While the *Bandemer* Court concluded that a redistricting plan that makes winning elections more difficult is not necessarily unconstitutional, 478 U.S. at 131, a plan that makes winning elections practically impossible surely violates the Equal Protection Clause. When an apportionment plan creates severely skewed or lopsided districts, voters in those districts undoubtedly suffer. By tilting the playing field to favor of one party's political efforts and against the others, potential candidates with a

track record of appealing to voters may nonetheless opt not to seek office because districts are so heavily skewed in favor of the opposing parties. Moreover, such candidates may be extremely disadvantaged in the ability to raise funds solely because of the appearance of the unlikelihood of election success based upon the makeup of the district in the redistricting plan. The prospect of voters not having the choice of Democratic candidates or Democratic candidates without the ability to raise the funds necessary to run a competitive campaign, solely as a result of a redistricting plan can only lead to voter apathy and relegate those voters to perpetual minority status.

Former Chief Justice Zappala of the Pennsylvania Supreme Court, in his dissenting opinion in *Erfer v. Commonwealth of Pennsylvania*, 568 Pa. 128, 794 A.2d 325 (2002), a challenge to Act 1 brought in Pennsylvania state court, accurately recited the reasons Act 1 was a political gerrymander in violation of the Equal Protection Clause. This reasoning is relevant to an analysis of Act 34 because the district court in this matter concluded that the Republican Party passed a plan nearly identical to Act 1 after that court found Act 1 unconstitutional. *See Vieth v. Commonwealth of Pennsylvania*, 241 F.Supp.2d 478, 485 (2003).

Chief Justice Zappala concluded that Act 1 "was formulated so as to intentionally discriminate and dilute the vote of an identifiable political group and had an actual discriminatory effect on that group." *Erfer*, 794 A.2d 325, 335. Specifically, he found that "the plan effectively secures an advantage to Republican candidates of 13-6 or 14-5 in the Pennsylvania congressional delegation" and that the "continual succession of Republican candidates is also achieved by the reasonable likelihood that they will prevail in 2002 and beyond." *Id.* at 339-340 .

Chief Justice Zappala recognized that "an equal protection challenge will not be sustained merely because particular candidates may not win in any given election." *Id.*

at 340. However, he also recognized that the fundamental principle at stake is "that we are governed by democracy and not oligarchy." *Id.* When that principle is disregarded, Zappala noted, "we have lost more than the representation of a Republican of Democratic elected official in the United States Congress." *Id.*

Justice Zappala's opinion accurately characterizes Amicus' interest in this litigation. Act 34 denies voters who support Democrats a fair chance to influence the election process. It creates an oligarchy. Act 34 effectively renders it impossible for voters who prefer Democratic candidates to elect a majority of Pennsylvania's congressional delegation, even if those voters form a majority of the electorate in a given election. Indeed, because of the way the districts are gerrymandered, Democrats can never win more than 7 of Pennsylvania's 19 congressional seats, and can potentially win only 5 of those seats. Thus, the plan guarantees that Democrats will be a minority for the foreseeable future. The overreaching by the Pennsylvania Republican Party in an effort to increase its power has effectively disenfranchised and diluted the voice of Democratic voters within this Commonwealth.

III. CONCLUSION

Amicus is well aware that the redistricting process is inherently political. Amicus is also aware of the *Bandemer* plurality's opinion that the party in control of state government at the time district lines are drawn is to be given some leeway when drawing districts. However, when the controlling political party draws district boundaries in such an egregious and blatantly partisan fashion so as to relegate the supporters of the majority to minority status, as the Pennsylvania Republican Party has done to Pennsylvania Democratic voters in Act 34, courts should be available to a

voter to remedy such action. Simply, a redistricting plan should not make it effectively impossible for one party, especially the majority party in many elections, to win a majority of congressional seats.

The Pennsylvania Republican Party executed an old-fashioned political power grab when it passed Act 34. At its core, Act 34 is a blatantly partisan redistricting plan that effectively thwarts majority rule and "consigns the majority to minority status." 478 U.S. at 126, n.9. Undoubtedly, its intent was to increase its hold on congressional seats, cripple the Democratic Party, and ensure that for the next 10 years the citizens of the Commonwealth who vote for Democrats will have virtually no chance to elect representatives of their choice despite being the majority party in Pennsylvania.

This Court should overturn the lower court decision in this matter. Act 34 is a pure political gerrymander in violation of the Equal Protection Clause of the United States Constitution. Consequently, it is the perfect case for this Court to reaffirm and clarify its holding in *Bandemer* because as Former Pennsylvania Supreme Court Chief Justice Zappala noted "if this case does not establish unconstitutional political gerrymandering, no such claim exists" and this Court should not "waste its valuable judicial resources entertaining illusory claims that, in reality, can never be established." 794 A.2d at 343.

Respectfully Submitted,

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August 29, 2003

Supreme Court, U.S.
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AUG 29 2003
OFFICE OF THE CLERK

No. 02-1580

IN THE

Supreme Court of the United States

RICHARD VIETH, *et al.*,
Appellants,

v.

ROBERT C. JUBELIRER AND JOHN M. PERZEL, *et al.*,
Appellees.

On Appeal from the United States District Court for the Middle District of Pennsylvania

JOINT APPENDIX

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Transcript of Proceedings Volume 2, *Vieth v. Pennsylvania*, No. 1:01-cv-02439-SHR (M.D. Pa. March 11, 2002, afternoon session) ..... JA 46

Transcript of Proceedings Volume 3, *Vieth v. Pennsylvania*, No. 1:01-cv-02439-SHR (M.D. Pa. March 12, 2002, morning session) ..... JA 138

Transcript of Proceedings Volume 4, *Vieth v. Pennsylvania*, No. 1:01-cv-02439-SHR (M.D. Pa. March 12, 2002, afternoon session) ..... JA 183

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Plaintiffs' Trial Exhibit 12 ..... JA 261

Defendants' Trial Exhibit 89 ..... JA 273

Defendants' Trial Exhibit 102 ..... JA 277

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Order, *Vieth v. Pennsylvania*, No. 1:01-cv-02439-SHR (M.D. Pa. Nov. 7, 2002) ..... JA 280

Order, *Vieth v. Pennsylvania*, No. 1:01-cv-02439-SHR (M.D. Pa. Dec. 30, 2002) ..... JA 282

NOTICE

The following documents have been omitted in the printing of the Appendix. They may be found in the Appendix to the 02-1580 Jurisdictional Statement at the following pages:

APPENDIX A
Vieth v. Pennsylvania, Order and Opinion, 241 F. Supp. 2d 178 (M.D. Pa. 2003) 1a

APPENDIX B
Vieth v. Pennsylvania, Order and Opinion, 188 F. Supp. 2d 532 (M.D. Pa. 2002) 13a

APPENDIX C
Vieth v. Pennsylvania, Order and Opinion, 195 F. Supp. 2d 672 (M.D. 2002) 46a

APPENDIX D
Erfer v. Commonwealth, Opinion, 794 A.2d 325 (Pa. 2002) 63a

APPENDIX E
Notice of Appeal 126a

APPENDIX F
Amended Complaint 128a

APPENDIX G
Affidavit of Robert Priest, filed with Plaintiffs' Motion to Impose Remedial Districts, April 22, 2002 ..... 148a

APPENDIX H
U.S. Congressional Districts - Act 34 ..... 164a

APPENDIX I
U.S. Congressional Districts - Southeast - Act 34 ..... 165a

APPENDIX I
U.S. Congressional Districts - Southwest - Act 34 ..... 166a

U.S. DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
(HARRISBURG)

CASE No. 1:01-cv-02439-SHR

Vieth, et al. v. Commonwealth of PA, et al.

Dec. 21, 2001	1	Complaint - for injunctive relief - redistricting the congressional districts.
Jan. 11, 2002	6	AMENDED complaint [1-1] adding Susan Furey; answer due 1/24/02 for Matthew J. Ryan, for Robert C. Jubelirer, for Richard - Filling, for Kim Pizzingrilli, for Mark S. Schweiker, for Commonwealth of PA
Jan. 23, 2002	21	ORDER by Judge Sylvia H. Rambo GRANTING plaintiffs' mtn for three judge panel [2-1]; The Chief Judge of the USCA for the 3rd Circuit is rqst'd to designate two other judges to serve as a three judge court in this matter
Jan. 24, 2002	22	ORDER by Judge Sylvia H. Rambo Evidentiary hearing before a 3-judge panel @ 10:00am on 2/11/02
Jan. 24, 2002	25	MOTION by defendant Robert C. Jubelirer, defendant Matthew J. Ryan to dismiss the amended complaint

Jan. 24, 2002	26	MOTION by defendant Commonwealth of PA, defendant Mark S. Schweiker, defendant Kim Pizzingrilli, defendant Richard Filling to dismiss the amended complaint
Jan. 25, 2002	28	MOTION by drafts Robert C. Jubelirer & Matthew J. Ryan to Abstain
Jan. 25, 2002	29	MEMORANDUM by drafts Robert C. Jubelirer & Matthew J. Ryan IN SUPPORT OF motion to Abstain [28-1]
Jan. 29, 2002	37	BRIEF by defendants Robert C. Jubelirer, Matthew J. Ryan IN SUPPORT of motion to dismiss the amended complaint [25-1]
Jan. 29, 2002	38	BRIEF by defendants Commonwealth of PA, Mark S. Schweiker, Kim Pizzingrilli and Commissioner IN SUPPORT of motion to dismiss the amended complaint [26-1]
Jan. 30, 2002	39	ORDER by Judge Sylvia H. Rambo GRANTING drafts' mtn for recon [33-1] of order dated 1/24/02 [22-2]; Evidentiary hearing re-sched'd for 9:30am on 3/11/02; Plaintiffs shall provide drafts w/their list of expert wtnses and supp statistics by 2/6/02; drafts shall provide plaintiffs w/their list of expert wtnses and supp. statistics by 2/13/02; all depos shall be conducted by 2/19/02; all motions in lim w/supp, brfs and/or rqsts for Daubert hrngs as

		to expert wtnses shall be filed by 2/22/02; brfng sched, for the pndng motions to dism. and to abstain are unchanged by this order
Feb. 5, 2002	40	BRIEF by plaintiffs Richard Vieth, Norma Jean Vieth, Susan Furey, IN OPPOSITION to motion to dismiss the amended complaint [26-1]; reply brief due 2/19/02, motion to dismiss the amended complaint [25-1]; reply brief due 2/19/02
Feb. 5, 2002	41	MEMORANDUM by plaintiffs Richard Vieth, Norma Jean Vieth, Susan Furey IN OPPOSITION motion to Abstain [28-1]; reply brief due 2/19/02
Feb. 8, 2002	42	REPLY BRIEF by defendants Robert C. Jubelirer, Matthew J. Ryan in support of motion to dismiss the complaint [25-1]
Feb. 8, 2002	43	REPLY BRIEF by defendants Robert C. Jubelirer, Matthew J. Ryan in support of motion to Abstain [28-1]
Feb. 8, 2002	46	REPLY BRIEF by defendants in support of motion to dismiss the amended complaint [26-1]
Feb. 21, 2002	58	ORDER by Judge Sylvia H. Rambo denying Drafts Matthew Ryan and Robert Jubelirer s motion to Abstain [28-1]; CONCURRING OPINION by Judge William H. Yohn, Jr.

Feb. 22, 2002 60 MOTION by defendants Robert C. Jubelirer, Matthew J. Ryan in limine to prohibit testimony concerning legislative process or motive

Feb. 22, 2002 61 MEMORANDUM by defendants Robert C. Jubelirer, Matthew J. Ryan IN SUPPORT OF motion in limine to prohibit testimony concerning legislative process or motive [60-1]

Feb. 22, 2002 62 MOTION by defendants Robert C. Jubelirer, Matthew J. Ryan in limine to exclude expert testimony by Larry Ceisler

Feb. 22, 2002 63 MEMORANDUM by defendants Robert C. Jubelirer, Matthew J. Ryan IN SUPPORT OF motion in limine to exclude expert testimony by Larry Ceisler [62-1]

Feb. 22, 2002 64 MOTION by defendants Robert C. Jubelirer, Matthew J. Ryan in limine to exclude testimony by Dr. Allan Lichtman

Feb. 22, 2002 65 MEMORANDUM by defendants Robert C. Jubelirer, Matthew J. Ryan IN SUPPORT OF motion in limine to exclude testimony by Dr. Allan Lichtman [64-1]

Feb. 22, 2002 66 MOTION by defendant Robert C. Jubelirer, defendant Matthew J. Ryan, House Republican Caucus to stay order denying mtn to quash and for protective order

Feb. 22, 2002 67 JOINDER by defendants Commonwealth of PA, Mark S. Schweiker, Kim Pizzingrilli, Richard - Filing joining memo of law in support motion in limine to prohibit testimony concerning legislative process or motive [60-1]

Feb. 22, 2002 68 JOINDER by defendants Commonwealth of PA, Mark S. Schweiker, Kim Pizzingrilli, Richard - Filling joining memo of law re motion in limine to exclude testimony by Dr. Allan Lichtman [64-1]

Feb. 22, 2002 69 JOINDER by defendants Commonwealth of PA, Mark S. Schweiker, Kim Pizzingrilli, Richard Filling joining memo of law re motion in limine to exclude expert testimony by Larry Ceisler [62-1]

Feb. 22, 2002 73 OPINION by Judge Sylvia H. Rambo

Feb. 22, 2002 74 ORDER by Judge Rambo, Judge Yohn, and Judge Nygaard - IT IS HEREBY ORDERED THAT: 1) Dft Executive Officers' mtn to dism pursuant to Rule 12(b)(1) is GRANTED IN PART and DENIED IN PART as follows: a) As to dff Commonwealth of PA, the mtn is GRANTED, all clms against the Commonwealth are dismissed; b) In all other respects, the mtn is DENIED. 2) Dft Presiding Officers' mtn to dism pursuant to Rule 12(b)(1) is DENIED; 3) Dft Executive Officers' mtn to dism pursuant to Rule 12(b)(6) is GRANTED

IN PART and DENIED IN PART as follows: a) The mtn is GRANTED as to Counts II, III, IV, and V of the amdcmp; b) The mtn is DENIED as to Count I of the amdcmp. 4) Dft Presiding Officers' mtn to dismpursuant to Rule 12(b)(6) is GRANTED IN PART and DENIED IN PART, as follows: a) The mtn is GRANTED as to Counts II, III, IV, V of the amdcmp; b) The mtn is DENIED as to Count I of the amdcmp [26-1]

Feb. 25, 2002 76 MOTION by plaintiffs for reconsideration of order dated 02/22/02 that granted in part and denied in part the Drafts' mtn to dismiss [74-1]

Feb. 25, 2002 77 MEMORANDUM by plaintiff IN SUPPORT OF motion for reconsideration of order dtd 2/22/02 that granted in part and denied in part the Drafts' mtn to dismiss [74-1] [76-1]; with exhibit and c/s

Feb. 26, 2002 78 ORDER by Judge Sylvia H. Rambo - IT IS HEREBY ORDERED THAT: Plaintiffs' mtn for clarification and/or reconsideration is DENIED [74-1] [76-1]

Feb. 26, 2002 82 BRIEF by plaintiffs IN OPPOSITION to motion in limine to prohibit testimony concerning legislative process or motive [60-1]; reply brief due 3/11/02

Feb. 26, 2002 83 MEMORANDUM by plaintiffs IN OPPOSITION motion in limine to exclude testimony by Dr. Allan Lichtman [64-1]; reply brief due 3/11/02

Feb. 27, 2002 87 MEMORANDUM by plaintiffs IN OPPOSITION to the mtn inlim to exclude expert testimony by Larry Ceisler [62-1]; reply brief due 3/12/02; with exhibits and c/s

Feb. 28, 2002 90 REPLY BRIEF by Presiding Officers Robert C. Jubelirer & Matthew J. Ryan in support of motion in limine to prohibit testimony legislative process or motive [60-1]; with exhibits and c/s

Mar. 1, 2002 91 MEMORANDUM by Judge Sylvia H. Rambo re. mtn in lim to prohibit tstmny concerning legislative process or motive

Mar. 1, 2002 92 ORDER by Judge Sylvia H. Rambo DENYING dfls' mtn in lim to prohibit testimony concerning legislative process or motive [60-1]

Mar. 6, 2002 101 MINUTE SHEET from evidentiary hrng; Witness activity list attached; time cmnc'd 9:28am; time termed 3:35pm; Court opens w/all prsnt; Judge makes opening rmks and rules on mtns for: Bifurcation [94-1], Denied, and pltfs' mtn to w/d mtn to set ddls [18-1], Denied; Dfts have burden and call wtns's re

their mtn in lim [64-1]; pltfs rspnd; Dfts call wtnses re their mtn in lim [62-1]; pltfs call wtns's; concluding argumnts. Matter taken under advisement

Mar. 6, 2002 102 EXHIBIT LIST by plaintiffs from evidentiary hrng held 3/6/02

Mar. 6, 2002 103 EXHIBIT LIST by defendants from evidentiary hrng held 3/6/02

Mar. 7, 2002 107 TRANSCRIPT filed of the Daubert Hearing held in front of Judge Rambo on 3/6/02

Mar. 7, 2002 108 TRANSCRIPT filed of Daubert Hearing held in front of Judge Rambo on 3/6/02

Mar. 8, 2002 109 ANSWER by defendants Mark S. Schweiker and Richard Filling to the amended complaint

Mar. 8, 2002 110 ANSWER and Defenses filed by Robert C. Jubelirer & Matthew J. Ryan

Mar. 11, 2002 111 TRIAL BRIEF submitted by plaintiffs

Mar. 11, 2002 114 MINUTE SHEET from Day #1 of evidentiary hrng ; time cmnc'd 9:30am, time trm'd 4:41pm; Court opens; J. Nygaard makes opening rinks. Plaintiffs make opening stmnt and call wtnses; Lichtman moved and admt'das an expert; Court adjourns until 8:30am on 3/12/02. Wtns activity list attch'd

Mar. 12, 2002 115 MINUTE SHEET from Day #2 of evidentiary hrng; time cmnc'd 8:30am, time trm'd 3:45pm; Court opens w/all present; J. Nygaard makes opening rmks; plaintiffs' wtns's continue; plaintiffs rest; Drafts call wtns's; Brunell moved and admt'd as expert in quantitative political science; Hallowel moved and admt'd as expert in political cnsltng; drafts rest; court adjourns. Wtns activity list attch'd

Mar. 12, 2002 116 EXHIBIT LIST by plaintiffs from evidentiary hrng held on 3/11/02 and 3/12/2002

Mar. 12, 2002 117 EXHIBIT LIST by defendants from evidentiary hrng held on 3/12/02 and 3/11/02

Mar. 13, 2002 113 TRANSCRIPT filed of reapportionment nonjury trial held on 3/11/02. VOLUME I (Pages 1 through 107)

Mar. 14, 2002 120 TRANSCRIPT of reapportionment non-jury trial, Volume 2, pgs 108-219, taken 3/11/02

Mar. 14, 2002 121 TRANSCRIPT filed of proceedings reapportionment nonjury trial on 3/12/02 vol. 3 before J. Rambo, Hon. William Yohn, jr., and Hon. Richard Nygaard

Mar. 14, 2002 122 TRANSCRIPT filed of proceedings reapportionment nonjury trial before J. Rambo,Hon.Richard Nygaard, Hon. William Yohn on 3/12/02 vol. 4

Mar. 15, 2002 123 POST TRIAL BRIEFS submitted by plaintiffs

Mar. 15, 2002 124 PROPOSED FINDINGS OF FACT and CONCLUSIONS OF LAW filed by plaintiffs

Mar. 15, 2002 125 POST-HEARING TRIAL BRIEFS submitted by drafts Robert C. Jubelirer & Matthew J. Ryan

Mar. 15, 2002 126 PROPOSED FINDINGS OF FACT and CONCLUSIONS OF LAW filed by drafts Robert C. Jubelirer & Matthew J. Ryan

Mar. 15, 2002 127 JOINDER by drafts Mark S. Schweiker, Secretary Weaver & Richard Filling n the presiding Officers' Proposed Findings of Fact and Conclusions of Law and Post Hearing Brief

April 8, 2002 136 OPINION by Judge Sylvia H. Rambo and U.S. Circuit Judge Richard L. Nygaard: Having determined that Act 1 is unconstitutional, we now address question of appropriate remedy. Drafts are ordered to submit a constitutionally sound redistricting plan that has been enacted into law by the Commonwealth of Pennsylvania to this court w/i three weeks of date of this opinion. See opinion for further details. An appropriate order will follow. (cc: all counsel, District Judge Rambo, Circuit Judge Nygaard, District Judge Yohn, publishers)

April 8, 2002 137 ORDER by Judge Sylvia H. Rambo and Circuit Judge Nygaard In accordance w/preceding opinion, IT IS HEREBY ORDERED THAT: (1) Plaintiffs' request for declaratory jgm is GRANTED. Act 1 is hereby declared unconstitutional as a violation of Article I, of the United States Constitution; (2) Plaintiffs' request for injunctive relief is GRANTED IN PART as follows: (A) To extent that Plaintiffs request that court enjoin Act 1's implementation, Plaintiffs' request is GRANTED. Drafts are permanently enjoined from implementing Act 1; (B) To extent that Plaintiffs request that court devise its own redistricting plan for use in 2002 congressional elections, Plaintiffs' request is deferred pending compliance by the Pennsylvania General Assembly w/this order; and instead, (3) The Pennsylvania General Assembly shall, w/i three weeks of date of this order, prepare, enact and submit for review and final approval by this Court, a congressional redistricting plan in conformity w/this opinion. This Court shall retain jurisdiction pending issuance of a final order in this matter. IT IS SO ORDERED.

April 8, 2002 138 OPINION by Judge Yohn, Dissenting: I agree w/majority that plaintiffs have met the first prong of Karcher test and that the appropriate remedy, if Act 1 is unconstitutional, is to give the Commonwealth of Pennsylvania a reasonable period of time to enact a

constitutionally sound redistricting plan. I respectfully dissent, however, from Section II.B. of the majority opinion and conclude that drafts have met their burden, although just barely, to establish a justification for the nineteen person maximum deviation, and that Act 1 therefore passes constitutional muster. I conclude that the nineteen person deviation was justified by the "legitimate state objective" of avoiding further splitting of voter precincts and that there has been no proof that the population deviation of nineteen persons bore any relationship to the alleged partisanship of Act 1. Thus, Act 1 is not unconstitutional. See document for further details.

April 11, 2002 139 NOTICE OF APPEAL by Drafts Robert C. Jubelirer, Matthew J. Ryan, to Supreme Court of the United States from District Court order filed 4/8/02 in this matter, which declared Act 1 of 2002 unconstitutional and permanently enjoined its implementation. Appeal is taken pursuant to 28 USC 1253 [137-1]

April 11, 2002 140 MOTION by Drafts Robert C. Jubelirer, Matthew J. Ryan for stay, pending appeal of order granting declaratory judgment and injunction and for expedited consideration

April 11, 2002 141 MEMORANDUM by Drafts Robert C. Jubelirer, Matthew J. Ryan IN SUPPORT OF motion for stay, pending appeal of order granting declaratory judgment and injunction and for expedited consideration [140-1]

April 11, 2002 142 NOTICE OF APPEAL of Drafts Governor Mark S. Schweiker, Secretary C. Michael Weaver, and Commissioner Richard Filling to Supreme Court of the United States from District Court order filed 4/8/02 in this matter, which declared Act 1 of 2002 unconstitutional and permanently enjoined its implementation. Appeal is taken pursuant to 28 USC 1253 [137-1]

April 11, 2002 143 JOINDER by Drafts Governor Schweiker, Secretary Weaver and Commissioner Filling joining in Presiding Officers' expedited motion for stay, pending appeal of order granting declaratory judgment and injunction and for expedited consideration, and Executive Officers' Memorandum of Law supporting a stay [140-1]

April 12, 2002 144 ORDER by Judge Sylvia H. Rambo denying motion for stay, pending appeal of order granting declaratory judgment and injunction and for expedited consideration [140-1]

April 18, 2002 147 RENEWED MOTION by defendants Robert C. Jubelirer and Matthew J. Ryan for stay, pending appeal, of order granting declaratory judgment and injunction and for expedited consideration with cert of cone and noncone, proposed order

April 18, 2002 148 MEMORANDUM by defendants Robert C. Jubelirer and Matthew J. Ryan IN SUPPORT OF motion for stay, pending appeal, of order granting declaratory judgment and injunction and for expedited consideration [147-1]

April 22, 2002 149 MOTION with BRIEF IN SUPPORT by Senator Robert J. Mellow for leave to participate as amicus curiae with proposed order

April 22, 2002 150 MOTION by plaintiffs to impose remedial districts and, in the alternative, to reject Act 34 and begin remedial hearings with attachments

April 22, 2002 151 BRIEF by plaintiffs IN OPPOSITION to motion for stay, pending appeal, of order granting declaratory judgment and injunction and for expedited consideration [147-1] reply brief due 5/6/02

April 22, 2002 152 MOTION to intervene Casey for Governor Committee, Rendell for Governor Committee and Pennsylvania Democratic Party with exh. attached, proposed order

April 22, 2002 153 MEMORANDUM by Casey for Governor Committee, Rendell for Governor Committee and Pennsylvania Democratic Party IN SUPPORT OF motion to intervene [152-1]

April 22, 2002 154 ORDER by Judge Sylvia H. Rambo IT IS ORDERED THAT Intervenor Tom Lingenfelter's complaint in intervention is construed by the court as a mtn to intervene pursuant to Rule 24 and is denied [146-1]

April 23, 2002 155 ORDER by Judge Sylvia H. Rambo IT IS ORDERED THAT defendants' renewed mtn for stay pending appeal of order granting declaratory judgment and injunction is GRANTED, as follows: 1) Upon consideration of defendants' renewed mtn for a stay, the stay is GRANTED. Defendants will be allowed to conduct only the 2002 Congressional elections using Act 1; [147-1] 2) A hearing is scheduled for the purpose of determining whether Act 34 suitably remedies the constitutional violation found by this court in its order of 4/8/02. Said hearing shall occur at 9:30 a.m. on 5/8/02, in Courtroom No. 2, Ninth Floor

April 23, 2002 156 ORDER by Judge Sylvia H. Rambo IT IS ORDERED that the joint motions for intervention filed on behalf of the Casey for Governor Committee, the Rendell for Governor Committee, and the PA Dmocratic Party are DENIED AS MOOT [152-1]

April 23, 2002 157 ORDER by Judge Sylvia H. Rambo IT IS ORDERED THAT Senator Robert J. Mellow's mtn for leave to file an amicus curiae brief is granted [149-1]

April 23, 2002 158 NOTICE OF APPEAL by plaintiffs from the Order entered in this matter on 2/22/02 dismissing plaintiffs' amended complaint for declaratory and injunctive relief insofar as it raised claims of impermissible partisan gerrymandering

April 29, 2002 160 Copy of LETTER to John Krill from the U.S. Supreme Court stating that the application for a stay of injunction pending appeal was dismissed by Justice Souter on 4/23/02

April 29, 2002 161 ORDER by Judge Sylvia H. Rambo: Dfls' shall file w/clerk a separate copy of Act 34 along w/a color copy of corresponding map

May 1, 2002 162 BRIEF (Captioned: Response) by drafts Robert C. Jubelirer & Matthew J. Ryan IN OPPOSITION to motion to impose remedial districts and, in the alternative, to reject Act 34 and begin remedial hearings [150-1]; reply brief due 5/14/02

May 1, 2002 163 JOINDER by drafts Schweiker, Weaver & Filling joining in the presiding officers' Opposition to plaintiffs' motion to impose remedial districts and, the alternative, to reject Act 34 and begin remedial hearings [150-1]

May 3, 2002 167 MOTION by Tom Lingenfelter-candidate for US Congress in the 8th Congressional District in Commonwealth of PA to intervene pursuant to FRCP24(a) and (b)

May 3, 2002 168 MOTION by Tom Lingenfelter for a partial stay of order dtd. 4/23/02 granting defendants permission to conduct the 2002 Congressional Primary Elections Using Act 1 which has been found unconstitutional

May 6, 2002 170 MOTION by Senator Robert J. Mellow for leave to intervene or, in the alternative, to participate as amicus curiae

May 6, 2002 171 MEMORANDUM by Senator Robert J. Mellow IN SUPPORT OF motion for leave to intervene or, in the alternative, to participate as amicus curiae [170-1]

May 6, 2002 172 BRIEF FILED by Senator Robert J. Mellow in support of Senate Democrats' Proposed Redistricting Plan

May 8, 2002 174 ORDER by Judge Sylvia H. Rambo DENYING Lingenfelter's motions for a partial stay of order dtd. 4/23/02 [168-1] and to intervene pursuant to FRCP24(a) and (b) [167-1]

May 20, 2002 177 RESPONSE by drafts Robert C. Jubelirer & Matthew J. Ryan

May 20, 2002 178 JOINDER filed by Mark S. Schweiker, Weaver & Richard Filling joining in the Response ofdrafts Jubelirer and Ryan to Mellow's mtn to intervene

May 30, 2002 180 REPLY BRIEF by amicus Senator Robert J. Mellow in support of motion for leave to intervene or, in the alternative, to participate as amicus curiae [170-1]

June 3, 2002 181 WRITTEN STATUS REPORT by Robert C. Jubelirer, Matthew J. Ryan

June 3, 2002 182 WRITTEN STATUS REPORT by defendants Commonwealth of PA, Mark S. Schweiker, Kim Pizzingrilli, Richard Filling

June 18, 2002 185 RESPONSE by Senator Robert J. Mellow to drafts' status reports

June 19, 2002 186 ORDER by Judge Sylvia H. Rambo; Stat report due by 8/19/02 re. the dispute over the order issued by the court of common pleas for Armstrong county on 3/15/02 addressing the following issues: A) if the matter has been resolved, has the line separating the South Buffalo Twnshp election district from the Eastern Buffalo Twnshp election district been restored to its original configuration prior to the Armstrong county order? B) If the line has not been restored, did the Armstrong County

order result in a movement of population between congressional districts? C) If the line drawn by the Armstrong County order resulted in a movement of population between congressional districts, how many people have been moved? D) If the Armstrong County order issue has not been resolved, are Drafts pursuing the matter through litigation? 2) Plaintiffs shall file by any obj's to drafts' sumbission with the court by 9/3/02

June 19, 2002 187 RESPONSE by plaintiffs to drafts' Status Report regarding Act 34's Population Deviation

Aug. 19, 2002 192 SECOND STATUS REPORT by defendants Robert C. Jubelirer, Matthew J. Ryan

Aug. 19, 2002 193 MOTION by defendants Robert C. Jubelirer, Matthew J. Ryan to add Board of Elections of Armstrong County as a necessary party to the action; propo, certconcurr/noncurr

Aug. 19, 2002 194 MEMORANDUM by defendants Robert C. Jubelirer, Matthew J. Ryan IN SUPPORT OF motion to add Board of Elections of Armstrong County as a necessary party to the action [193-1]

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Sept. 9, 2002	198	RESPONSE by amicus Senator Robert J. Mellow to drafts' second status reports
Sept. 9, 2002	199	JOINDER by amicus Senator Robert J. Mellow joining in plaintiffs' response to drafts' motion to add Board of Elections of Armstrong County as a party to the action [193-1]
Sept. 9, 2002	201	RESPONSE by plaintiffs to drafts' Second Status Reports regarding Act 34's Population Deviation; with c/s
Sept. 10, 2002	200	RESPONSE by plaintiffs to dfls' Mtn to Add Necessary Party
Sept. 13, 2002	202	ORDER by Judge Sylvia H. Rambo DENYING drafts' mtn to add Board of Elections of Armstrong County as a necessary party to the action [193-1]; GRANTING IN PART AND DENYING IN PART Senator Mellow's mtn for lv to intervene or, in the alternative, to participate as amicus curiae [170-1] as flws: As to Sen. Mellow's mtn to intervene, the mtn is DENIED; As to Sen. Mellow's alternative mtn to participate as amicus curiae, the mtn is GRANTED; Clerk shall STRIKE clmpt in intervention [173-1]; Oral Argument re. constitutionality of Act 34 set for 1:30pm on 10/15/02

Sept. 13, 2002	203	REPLY by drafts Robert C. Jubelirer & Matthew J. Ryan to Mtn to Add Necessary Party [193-1]
Sept. 13, 2002	204	JOINDER by drafts Mark S. Schweiker, Weaver & Richard Filling joining in the Reply to Plaintiffs' Response to Mtn to Add Necessary Party
Oct. 4, 2002	210	MOTION by Presiding Officers' Robert C. Jubelirer & Matthew J. Ryan for leave to Present Evidence at heating; with cert. of non-conc
Oct. 4, 2002	211	MEMORANDUM by Presiding Officers' Jubelirer and Ryan IN SUPPORT OF motion for leave to Present Evidence at hearing [210-1]
Oct. 4, 2002	212	JOINDER MEMORANDUM by drafts Mark S. Schweiker, Weaver & Richard Filling in the Presiding Memorandum in Support of their Mtn to Offer Evidence [211-1]
Oct. 17, 2002	217	BRIEF by plaintiffs IN OPPOSITION to mtn for leave to Present Evidence at hearing [210-1]; rplybr due 10/30/02

Nov. 7, 2002	222	ORDER by Judge Sylvia H. Rambo; 1) DENYING Sen. Mellow's mtn to stay [213-1]; 2) GRANTING IN PART AND DENYING IN PART drafts' mtn to Present Evidence at hearing [210-1] as follows: A) Drafts will be allowed to present the following evidence at the hrng: (i) An afdvt from K. Sullivan including documentation of the population database; (ii) Cert. copies fo the Armstrong cnty crt docket in #2002-00081 and the does reflected in the docket entries; (iii) Copies of the legislative journals for the Senate and House from 4/15 and 17, 2002; and (iv) Copies of the biography of Congressmen J. Murtha appearing on his official website on 10/4/02. B) Dfls will not be allowed to present the afdvt ofJ. Scahill. 3) Oral Argmnt set for 01/09/03 @ 10:00 am (cc: all counsel, court, Judges, crtrptr))
Nov. 13, 2002	224	CERTIFIED COPY of U.S. Supreme Court Order: dismissing the appeal [139-1] (Jubelirer and Ryan vs. Vieth) as moot
Dec. 19, 2002	227	PRE-TRIAL MEMORANDUM submitted by plaintiffs
Dec. 20, 2002	228	PRESIDING OFFICERS' MOTION by defendants Robert C. Jubelirer, Matthew J. Ryan for summary judgment

Dec. 20, 2002	229	MEMORANDUM by defendants Robert C. Jubelirer, Matthew J. Ryan IN SUPPORT OF motion for summary judgment [228-1]
Dec. 20, 2002	230	PRESIDING OFFICERS' STATEMENT OF MATERIAL FACTS by defendants Robert C. Jubelirer, Matthew J. Ryan in support of motion for summary judgment [228-1]
Dec. 20, 2002	232	JOINDER by Governor Mark S. Schweiker, Secretary Weaver, Commissioner Richard Filling joining in Presiding Officers' memorandum in support of motion for summary judgment [228-1]
Dec. 30, 2002	233	ORDER by Judge Sylvia H. Rambo; 1) Hmg re. Act 34 to take place on 1/9/03 @ 10:00 as sched'd. 2) Plaintiffs bropp to drafts' mtn for s/j [228-1] is due by 1/7/03.3) Parties should be prepared to present oral argument on drafts' mm for s/j at the hrng. (cc: all counsel, court, Judges) (ma) Modified on 12/30/2002
Jan. 3, 2003	235	SUPPLEMENTAL MEMO IN SUPPORT re motion for summary judgment of Presiding Officers [228-1]
Jan. 7, 2003	236	MEMORANDUM by amicus Senator Robert J. Mellow IN OPPOSITION to Presiding Officers' mtn for sumjgm [228-1] with cert of compliance with LR7.8(b)(2)

Jan. 7, 2003 237 MEMORANDUM by amicus Senator Robert J. Mellow in response to drafts Schweiker, Weaver and Filling's joinder in the memsup [229-1] of Presiding Officers' mtn for sumjgm [228-1]

Jan. 7, 2003 238 RESPONSE by amicus Senator Robert J. Mellow to Presiding Officers' stmnt of mat. fcts [230-1] in sup. of mtn for sumjgm. [228-1]

Jan. 7, 2003 240 RESPONSE by plaintiffs to stmnt of mat. fcts [230-1] re. mtn for sumjgm [228-1]

Jan. 8, 2003 242 BRIEF by plaintiffs IN OPPOSITION to drafts' mtn for sumjgm judgment [228-1]; reply brief due 1/21/03

Jan. 9, 2003 243 REPLY BRIEF by Presiding Officers Robert C. Jubelirer, Matthew J. Ryan and Amicus in support of motion for summary judgment [228-1]

Jan. 9, 2003 244 REPLY BRIEF by Executive Officers Mark S. Schweiker, Richard Filling and Weaver in support of motion for sumjgm [228-1]

Jan. 24, 2003 246 OPINION AND ORDER OF THE COURT by Judge Sylvia H. Rambo re. plaintiffs' mtn to impose remedial districts and drafts' mtn for s/j

Jan. 24, 2003 247 ORDER by Judge Sylvia H. Rambo DENYING drafts' mtn for s/j [228-1] and DENYING AS MOOT plaintiffs' mtn to impose remedial districts and, in the alternative, to reject Act 34 and begin remedial hearings [150-1]; the congressional redistricting plan contained in Act 34 is given final approval Clerk of court is directed to enter judgment in favor of drafts and against plaintiffs. (cc: all counsel, court, orig to security)

Jan. 24, 2003 249 JUDGMENT by Judge Sylvia H. Rambo in favor of the defendants and against the plaintiffs. (cc: all counsel, court, orig to security)

Feb. 24, 2003 254 NOTICE OF APPEAL by plaintiff from District Court order & jgm filed 1/24/03 [247-1] [249-1] (Filing fee paid, TPO given) Email with attachments to USCA. (cc: Not/app w/info/ack ltr to cnsl, C/R, Ct.) Receipt No. & Amt: 111 [illegible]8202 $105.00 (sc)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, et al.,
Plaintiffs

v. NO: 1:CV-01-2439

THE COMMONWEALTH OF
PENNSYLVANIA,
Defendants

TRANSCRIPT OF PROCEEDINGS

REAPPORTIONMENT NONJURY TRIAL

VOLUME 1
(Pages 1 through 107)

BEFORE: HON. RICHARD L. NYGAARD, Judge
HON. WILLIAM H. YOHN, JR., Judge
HON. SYLVIA H. RAMBO, Judge
DATE: March 11, 2002, morning session
PLACE: Courtroom Number Three
Federal Building
Harrisburg, Pennsylvania

COUNSEL PRESENT:
PAUL M. SMITH, Esquire
BRUCE V. SPIVA, Esquire
DANIEL MACH, Esquire
ROBERT B. HOFFMAN, Esquire

For - Plaintiffs
JOHN P. KRILL, Esquire
LINDA J. SHOREY, Esquire
MARSHA A. SAJER, Esquire
For - Defendants Jubelirer & Ryan

J. BART DELONE, Esquire
For - Defendants Commonwealth of PA, Governor,
Secretary and Commissioner Filling

Vicki L. Fox, RMR
Official Reporter

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MR. KRILL: We will have one more. I also referenced Exhibit 53.
JUDGE NYGAARD: Which one?
MR. KRILL: 53 which is the certification of the enrolled bill which constitutes Act 1 of 2002.
MR. SMITH: No objection, Your Honor.
JUDGE NYGAARD: It is admitted. You may call your next witness.

MR. SMITH: Plaintiffs call Professor Allan Lichtman.

ALLAN LICHTMAN, called as a witness, being duly sworn, testified as follows:

THE CLERK: Would you state your name, please?

A Allan J. Lichtman.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. SMITH:

Q Professor Lichtman, where are you employed?

A I am a full Professor of History at American University in Washington, D.C.

Q How long have you been employed at American University?

A I have been employed there since 1973. I have been a Full Professor for more than twenty years.

(Daubert Hearing Exhibit was introduced as Plaintiffs Exhibit 5.)

BY MR. SMITH:

Q Let me ask you to refer in the book to Plaintiff Exhibit 5. I ask you whether this is your current curriculum vitae.

A Yes, it is.

MR. SMITH: I move the admission of Exhibit 5, Your Honor. I

MR. KRILL: No objection.

JUDGE NYGAARD: Admitted.

(Plaintiffs Exhibit was admitted into evidence.)

BY MR. SMITH:

Q Professor Lichtman, what areas of scholarship do you

focus on?

A I would say focus on three areas of scholarship. One is the study of political history and political systems using both traditional historical methods and methods of quantitative analysis.

The second area would be the quantitative or statistical study itself of political information. And a third area would be the application of quantitative and social science methods to issues involved in voting rights.

Q Have you published in scholarly journals in those areas?

A I published in scholarly journals. I have published in scholarly series, and I published scholarly books in all of those areas.

MR. KRILL: Your Honor, his CV is in evidence. I will waive voir dire.

MR. SMITH: I will continue on very briefly, Your Honor, just to elaborate.

BY MR. SMITH:

Q Have you testified as an expert before, Dr. Lichtman?

A Yes. I have worked as an expert in some 60 or more redistricting and voting rights case.

Q Can you give us some examples of organizations that have retained you to appear as an expert witness in redistricting and voting rights cases?

A Yes. I have worked for some twelve to fifteen times in cases for the United States Department of Justice. I have worked for numerous civil rights organizations including among others the NAACP, the LDF, MALDEF, Mexican American Legal Defense and Education Fund, the Lawyers' Committee for Civil Rights and the Law, the Southern Poverty Law Center.

I have worked for a number of state and local governments. I have worked for nonpartisan redistricting commissions. I have worked for both Democratic and Republican interests; although, I am more often for Democratic interests.

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I have worked for both plaintiffs and defendants in voting rights and redistricting matters.

Q Are you familiar with various methods of assessing statistically the partisan fairness of redistricting plans?

A I am.

Q Have you offered testimony on that subject in prior cases?

A I have. Both in the post round of redistricting and in the current round of redistricting, I have offered such testimony.

MR. SMITH: Your Honor, I would offer Dr. Lichtman as an expert in quantitative methods in the analysis of political systems.

JUDGE NYGAARD: I take it from your waiver, you have no objection? Granted.

BY MR. SMITH:

Q Professor Lichtman, what question were you asked to address in this case?

A I was asked to address the question of the partisan fairness of the Act 1 Plan with respect to Republicans and Democrats and also to compare the partisan fairness of the Act 1 plan to alternative plans that were presented to me.

Q And what methodologies did you use to answer those questions?

A I used a series of methodologies to explore the issue

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of partisan fairness.

Q Can you tell us the first one?

MR. KRILL: Excuse me Your Honor, just to make sure the record is clear on this, I will object to the relevance of Dr. Lichtman's testimony. I didn't think partisan fairness is an issue for the Court.

JUDGE NYGAARD: Overruled.

A The first method that I used is what is called a seats votes comparison. That is I compared across all districts of a plan, the relative strength of Republicans and Democrats to see how for the whole state the Republican strength compared to the Democratic strength.

I then compared that overall partisan division between Republicans and Democrats to the partisan divisions in each of the individual districts within the plan.

For example under this analysis, if the partisan strength of the two parties across all districts for the whole state is divided 50/50 by some measure of partisan strength, then under a fair plan, a plan that treated the parties the same, you would expect each party to have a majority in 50 percent of the individual districts.

To the extent the division of the districts departs from 50/50, then the plan is tilted or biased in favor of one or the other parties.

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BY MR. SMITH:

Q What mechanisms in drawing district lines would make it possible for a party to get more than fifty percent of the seats with only fifty percent of the votes?

A These are essentially the same mechanisms that I have written about in the literature that are used to diminish the opportunities for minorities to elect candidates of their choice. So too, they can used to diminish the opportunity of Republican or Democratic voters to elect candidates of their choice.

The first method is known as packing. That is where you very heavily concentrate the voters of one party into a relatively small number of districts. You concentrate them at levels far beyond what is necessary to elect candidates of their choice; thus in effect, wasting votes that could be allocated to other districts that would give voters of that party the opportunity to elect candidates of their choice in those other districts.

The second mechanism is kind of the opposite. It is known as cracking or fracturing. That is where you take concentrations of Democratic or Republican voters and split them up. So while they might have a significant presence in a number of districts, the majority in those districts is held by the opposition party.

Either or both of those mechanisms can produce

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this disparity that we have been referring to; that is a difference between the 50/50 overall strength of the parties across all districts and the number of majority districts allocated to each party.

Q Doctor, what data did you use to measure the seats votes relationship?

A In measuring the seats votes relationship, it is very important to have data that is independent of the drawing of the lines itself so you can test the effects of the drawing of the lines on the seats votes relationship.

So you want data that has the same voters in the same elections both before and after the redistricting. So the data I chose was all statewide elections held at the same year and the same time as Congressional elections.

There were such elections from 1992 to 2000. In addition, I added one additional election which was a 1991 special election for a position in the Congress. It was a 1991 election for a place in the United States Senate.

So my data base consisted in toto of 19 statewide elections held over the ten year period from 1991 to 2000 with 18 of them coming at the same time as the Congressional elections.

Q Referring quickly to Exhibit 13 in the book, is this the source of the election data that you used?

A Yes, it is.

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Q Did you consider the alternative of using Congressional election results as the basis for your testing the effects of the various district maps?

A I did.

Q Can you tell us why you chose not to do that?

A As I said, you need a yardstick or a test that is independent of the drawing of the lines themselves so you can isolate the drawing of the lines. Congressional elections do not meet that test because the new Congressional Districts are composites that consist of two or more previous Congressional Districts.

So when you allocate the votes from previous Congressional elections into the new Congressional Districts, you are allocating bits and pieces of different elections. Some Congressional elections in Pennsylvania are entirely uncontested so you would be adding in a hundred percent and

zero percents. Some are only lightly contested. Many are affected by incumbency. So you are adding together into the new districts very different previous Congressional elections which may not accurately reflect the underlying partisan composition of the new districts.

With statewide elections, you have same voters, same elections before and after the drawing of the lines. You are isolating the effects of the drawing of the lines themselves. With Congressional elections, the results are

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contaminated by adding together these bits and pieces.

(Lichtman's Tables were introduced as Plaintiffs Exhibit 12.)

BY MR. SMITH:

Q Now, Doctor, just to identify it let me ask you to look back at Exhibit 12 and tell us what that is.

A That is a series of tables that I prepared.

Q That reflect the results of your analysis?

A To reflect all of the multiple levels analyses that I performed.

Q Okay. Let me ask you to refer to page one, Table 1 of Exhibit 12and ask you if you can use that to explain the results of your analysis of the seats votes relationship with respect to the Act 1 Plan?

A Yes. Table 1 is not limited to a seats votes analysis. It contains other information. However, we can't isolate the seats votes analysis within Table 1.

Table 1 looks at the relationship between seats and votes for the 19 statewide elections both for the 1992 Plan and for the Act 1, the enacted plan.

Q What do you call the Act 1 Plan on this table?

A I think it is called the Conference Plan on this

table. At the time it was prepared, I used that term, but it is the Act 1 Plan.

If you look at the bottom row of the table, it has

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both for the existing plan and for the Act 1 Plan the overall percentage strength of Democrats and Republicans across all of the Congressional Districts.

And what the table shows is that across all districts statewide, the two parties are evenly divided over this ten year period for these elections with approximately fifty percent of the vote going for Democrats and approximately fifty percent going to Republicans.

Under those circumstances, if the plan was absolutely equivalent for Republicans and Democrats, then you would expect about half of the districts to have in them a Democratic majority on average across the 19 elections and half of the districts to have in them across 19 elections a Republican majority.

So that the 50/50 strength of the parties across all districts would be reflected in the individual districts, and there wouldn't be this phenomena of packing and cracking.

When in fact you look at the individual district results, they do not however conform to the 50/50 pattern. In the existing plan, more districts have a Republican majority across the elections than have a Democratic majority. Twelve of the districts as indicated on the bottom row have a Republican majority, and nine of the districts have a Democratic majority.

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Likewise, when you look at the enacted plan, you find that there is also a disparity between Republicans and Democrats, but a significantly greater disparity. For the enacted plan, 14 of the districts have a Republican majority across on average on 19 elections and only five districts have a Democratic majority.

In other words, although the vote across all districts is relatively evenly divided between the two parties, Republicans have a majority individually in 74 percent of the districts, 14 out of 19.

Thus we can quantitatively assess the departure from what we call partisan symmetry or equality, the 50/50 mark. The Act 1 Plan is biased in favor of Republicans by four and one-half districts, and it is biased in favor of Republicans by 24 percent. That is they have 74 percent of the districts rather than 50 percent as measured by our 19 election average.

Q Dr. Lichtman, were in the courtroom for Mr. Priest's testimony?

A Yes, I was.

Q Did you hear the testimony about the differentials between county by county election returns and precinct by precinct election returns?

A I did.

Q Do you have an opinion about the significance of those

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differentials with respect to the analysis that you presented here?

A Yes. There is no significance whatever on average. Even if you assume -- and this is not true -- all of the

variance favor the Democrats, even if you assume that, on average the variance is less than one-tenth of one percent, far too small to have any impact, whatsoever, on this analysis.

Even if you moved all these numbers by the average, it would have no impact at all. You would reproduce exactly the same conclusions even under the assumption that all the variants went in one direction when in fact it doesn't. You got a 14/5 allocation.

Q Let me ask you to turn to Table . First of all, Table deals with which plan?

A Table 3 deals with the plan labeled Alternative 3.

Q What does it show about the seats vote relationships in Alternative 3?

A The left-hand side is identical to Table i. It is the existing plan. We would look over to the right-hand side of the table, the bottom row of the table likewise shows that Alternative 3 has a tilt or bias in favor of the Republicans, with Republicans having a majority in 12 of the 19 seats or 63 percentage.

So while this plan also has a bias or tilt towards

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Republicans, it is significantly less than the bias or tilt of Act 1. In Act 1, the bias was percent or four and a half seats. Here the bias is percent or two and one-half seats.

Q And can you turn over to Table 4 and tell us what plan that relates to?

A Table 4 relates to the plan that is labeled Alternative 4.

Q What does it reflect about the seats vote relationship in Alternative 4?

A Again, if you look to the right-hand side of the table, you see that Alternative 4 has precisely the same partisan tilt or bias as Alternative 3. That is Republicans have a majority in 12 of the 19 districts based on our 19 elections. Democrats have a majority in seven.

So once again, the tilt in favor of Republicans is 13 percent or two and one-half seats as compared to 24 percent or four and one-half seats for Act 1.

Q Is Table 5 then a summary that includes the results of your seats votes analysis?

A Yes, it summarizes the seats votes and some other analyses, but the seats votes summary is included in Table 5.

Q Okay. Were there some checks that you performed to verify the reliability of the analyses that you have just presented?

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A Yes. I performed a number of checks on the reliability of the analysis just presented.

Q Okay. Can you give us some? Tell us what those were.

A Yes. Check number one is based on Table 1 itself. And it is just a check of the correspondence in the existing 1992 plan between on average the Democratic and Republican percentages in each district for our elections and whether that district is held by the party that has a majority in the district based on this ten year average.

And in 18 of 21, better than 85 percent of the districts, the party having a majority in the district based on our 19 elections over a ten year period also holds that particular seat based on Congressional elections.

There are only three exceptions, and they are all quite explicable and not surprising.

Q What does that tell you about the analysis?

A It tells me there is a very close correspondence. You don't get much better prediction than close to 90 percent in social science between the average statewide results across a ten year period and whether or not a Republican or Democrat has been elected in a district for Congress.

JUDGE YOHN: Which table are you on now?

A Table 1, Your Honor.

BY MR. SMITH:

Q You were discussing which plan at this point?

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A What I was doing, Your Honor, was looking at the 1992 plan.

JUDGE YOHN: I understand what you are doing. I thought you were still on Table 5.

A I am sorry.

JUDGE YOHN: I didn't understand it with reference to Table 5.

A This is definitely Table 1.

BY MR. SMITH:

Q Are there some other checks that you did on the reliability?

A Yes, there are a number of other checks that I performed. If you turn now to Table , that represents another series of checks that I performed on my analysis and on the reliability of the data.

What Table 9 does is look at linear correlations which is nothing more than the linear or straight line relationship between two sets of data, how closely do they correspond to one another.

I looked at this correlation from 1992 to 2000 looking each year at the mean Democratic vote for statewide elections held in that year. So each entry in the table

represents the average Democratic vote for all the statewide elections held in 2000, 1998, 1996, 1994 and 1992.

I then looked at the correlations among all of

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those averages to see whether or not there was essentially a stable Democratic and Republican electorate from year to year over this time period.

Let me say the linear correlation varies from zero, which indicates no relationship between the two years, and 1.0, which you never get in social science, which indicates a perfect relationship, exactly the same numbers from one year to the next.

However, the table does show extremely high correlations across this entire time period and for all the various pairs of elections. In every instance, the correlation is above .9, very closely approaching the perfect correlation that you only get in experiments and not in the real world.

Q What unit of geography are you studying?

A These are all as indicated by the table precinct level data. So I am correlating these averages across all of the 9400 plus precincts of the state.

So you are looking at over 9,000 data points and seeing how closely they are correlating with one another. We are getting down to much finer geography than Congressional districts.

Q How does this correlation relate to the reliability of your analysis?

A There has been some issue raised about changing

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precinct boundaries over time. And as in every state, as was described by the previous witness, there is a need to trace those boundaries over time and allocate election returns to a common base of precincts for purposes of comparison.

That is a standard procedure in social science. It is done in every state in which I have ever been involved. And listening to the testimony, standard methods were followed. This, however, tests whether any problems arose in that allocation. Because as you heard from the testimony and the cross-examination, the problems would obviously arise in the comparison between elections held at the beginning of the decade and elections held at the end of the decade when you have the maximum number of precinct changes.

If there were significant problems to arise, what this data would show is substantially lower correlations between the precinct level averages from 1992 and 2000 as compared to the precinct level averages from 2000 in 1998 when there are many fewer precinct changes.

In fact though if you look at the table, there is no such pattern of difference. If you look at Table 9 and look at the first data column of the table, you see the correlation by precinct between the mean Democratic votes in 2000 and is .924, extremely high correlation for social science.

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Similarly, the correlation between too much more recent elections, the mean Democrat and the mean Democrat 1998 is .931, almost an identical correlation. You are changing over there in the third decimal place.

And likewise, if you look at the next column, the correlation between the mean percent Democrat in 1998 and the mean percent Democrat by precinct in 1992 is .934 which is actually higher by a trivial amount, but it is actually higher than the mean between 1998 and 2000 of .931.

So there is utterly no indication in this data that precinct allocations in any way have affected the relationships over time. Quite the contrary. No matter what years you are looking at, the correlations are comparable and extremely high.

Q Okay. Are there some additional checks you did on the reliability of your analysis?

A There are. Table i is likewise looking at linear correlations at a very fine level of geography, the precinct level. This table tests the relationship between the statewide vote and the Congressional vote to see if there is a correspondence between the two.

Obviously, you wouldn't expect a perfect correspondence because as I indicated, there are uncontested elections which we took out of the analysis, but there are also some very lightly Congressional elections. And, of

course, each of the individual Congressional elections are affected by unique factors to the individual Congressional Districts.

However, given all of that, one still finds extremely high linear correlations for each year between the percent Democratic in the statewide elections on average for that year and the percent Democratic in the individual Congressional elections conducted that year.

Remember linear correlation varies from zero to one. And in each of these cases, we have linear correlations

above .8, again extremely high correlations particularly when you are dealing with data at the precinct level and many, many thousands of precincts.

Q Turning over to Table 11, is that an additional check?

A Table 11 is yet an additional check. Here I performed an analysis known as regression analysis which looks for each year at the relationship between the mean vote cast for statewide candidates and the vote for Congressional elections in that same year.

And essentially what the regression analysis gives you is that if at the precinct level -- again, this is at precinct level analysis -- the percent Democratic in the statewide elections were to increase by one percent, by what percent would you expect the percent Democratic in the Congressional elections to increase?

And correspondingly because percent Democratic and percent Republican are mirror images of one another, if percent Republican increased by one percent in a precinct for the statewide average, by what percent would you expect the Congressional percentage for Republicans to increase?

And these numbers are reflected in the first data row of the table for 1992, 1994, 1996, 1998 and 2000. And they show about as close a correspondence as you can get in social science.

They show essentially a one to one correspondence between the statewide averages and the Congressional vote. For example, for the 1992 elections, if percent Democratic in a precinct increased by one percent for the statewide elections, you would expect the percent Democratic for an Congressional election to increase by 1.1 percent.

And correspondingly because they are mirror

images, if percent Republican in the statewide elections increased by one percent, you would expect percent Republican in the Congressional elections by precinct to increase by 1.1 percent.

For 1994, the correspondence between the statewide and the Congressional elections at the precinct level is likewise very close to .94. In 1996, it is 1.1. In 1998, it is .98. And in 2000, it is 1.0. And overall, the average is virtually equal to one.

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So what this means is if you had a set of precincts and you reallocated them into a new set of Congressional Districts -- that is the way we heard Congressional Districts are created at the precinct level -- you would expect that on the basis of the precincts you put into a new Congressional district, the statewide, if the average of the statewide elections increased by one percent for the Democrats, you would likewise expect the Congressional vote for the Democrats in that new Congressional district to increase by a precisely corresponding one percent.

Likewise, if you allocated precincts into a new district such that for the statewide elections, the average percent Republican increased by one percent, you would likewise expect in Congressional elections the average percent Republican to increase by one percent.

So the statewide elections are a nearly perfect tool for assessing changes in the expected percentage in Congressional elections.

Q Doctor, let me ask you: Did you do anything to study whether the particular statewide elections you selected made a difference in the analysis?

A Yes, I did. I did two things -- two additional checks. One, I took out the one election -- the 1991 special election that was not conducted at the same time as the

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Congressional elections, recomputed the analysis. And not surprisingly since it was just one election, not all that much different from the average statewide mean, it had no effect whatever on the outcome of the analysis.

Second thing I did was look at the bottom of the ticket only. That is I took out Congress, President, and Governor and only looked at the bottom of the ticket to see if that would affect the results. And once again, you found the same kind of major disparity between votes.

JUDGE YOHN: What do you mean the bottom of the ticket?

A All elections other than President, Governor and --

JUDGE YOHN: Auditor General?

A Auditor, Treasurer and Attorney General.

MR. SMITH I am about to turn to another area in his testimony, Your Honor. This would be a good time to break.

JUDGE NYGAARD: Well then, why don't we break for lunch. We are at twelve-thirty. We will recess for lunch and resume our proceedings at one-thirty.

THE CLERK: Court is in recess.

(A recess was taken.)

(Whereupon, the morning proceedings were concluded.)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, et al.,
Plaintiffs

v. NO: 1:CV-01-2439

THE COMMONWEALTH OF
PENNSYLVANIA,
Defendants

TRANSCRIPT OF PROCEEDINGS

REAPPORTIONMENT NONJURY TRIAL

VOLUME 2
(Pages 109 through 219)

BEFORE: HON. SYLVIA H. RAMBO, Judge

DATE: March 11, 2002

PLACE: Courtroom Number Three
Federal Building
Harrisburg, Pennsylvania

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AFTERNOON SESSION

ALLAN LICHTMAN resumes the stand.

JUDGE NYGAARD: You may continue, Mr. Smith.

BY MR. SMITH:

Q Professor Lichtman, I believe you were telling us about the seats votes study that you did. Can you tell us what other ways you went about studying the part is an fairness of Act I?

A Yes. The second way in which I went about studying partisan fairness was to look at the treatment of incumbent

members of Congress to see if Republican and Democratic incumbents were essentially being treated the same way in the plan.

This is extremely important because incumbents have significant electoral advantages – fund-raising, name recognition, a personal relationship with constituents. And the literature stresses even if a plan had no packing or cracking and you saw no bias in a seats votes relationship, it still could be significantly favorable to one party or the other through the treatment of incumbents.

Indeed, some of the literature have called the treatment of incumbents the key to a partisan gerrymander.

Q How did you go about studying treatment of incumbents?

A I studied the treatment of incumbents in a number of different ways. First thing I did was look at the extent to

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which incumbents were paired in the same district. That is I looked at essentially two things -- were incumbents of the same party being paired together in a single district thus eliminating the incumbent advantage of at least one of them, and was that being applied equally by the parties.

I also looked at whether or not there were corresponding open seats created to create opportunities for a party that might have been disadvantaged by same party incumbent pairing.

Then also on pairing, I looked at whether or not there were Republicans and Democrats paired in the same district. That is a cross party pairing. And if so, did the district tend to favor the Republican incumbent or the Democratic incumbent, or did each member of one or the other parties have an equal chance in that district again based upon my 19 election average.

Q Where is the pairing analysis reported in your tables?

A For Act I, the pairing analysis is reported in the same Table 1 that we looked at for the seats votes analysis.

Q That is Plaintiff Exhibit 12 --

A Yes.

Q -- the collection of tables?

A Yes. And this is the very first page Table 1.

Q What did you find with respect to the issue of pairing?

A First as I mentioned, I looked for pairings of members

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of the same party in a district. And it turns out that there are four Democrats paired into two districts and no Republicans paired with one another in any districts.

If you look down the column entitled Conference Plans, five columns from the left, you can see District 13 under the new plan pairs Representative Borski and Hoeffel, two Democrats.

Likewise, if you go down the list to District 14 -- and these are not in consecutive numbers on the Act I Plan because they are aligned with the 1992 plan so we can follow the treatment of incumbents. If you go down a little below the middle of the page to District 14, you can see that two Democrats Coyne and Doyle are likewise paired in the same district. Thus four Democrats are paired with one another, but there are no same party pairings of Republicans.

Table 1 also shows for District 17 under the Act I Plan, which is cited about a third of the way -- quarter of the way down the column -- there is a cross party pairing. Representative Holden is paired, a Democrat, is paired with Representative Gekas, a Republican.

If you turn to the entry immediately on the next column, you can see that based on our 19 election average

that corresponds so closely to Congressional results, that district had an average Democratic percentage of 41.7 percent or correspondingly an average Republican percentage of 58.3

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percent. So it is a heavily Republican leaning rather than a Democratic leaning district in which a Republican and Democrat is paired.

So when you look at the sum of the pairings, you can see based on pairings the two parties are not being treated equally. Only Democrats, and four of them, are paired in the same district and another Democrat is paired with a Republican in a district with an average heavy Republican majority across 19 elections.

Q What was another way in which you looked at the treatment of incumbents in Act I?

A Another way I looked at incumbents was to what extent were their districts changed to make their districts either more favorable or less favorable compared to the districts in which they previously won election under the 1992 plan.

Q Okay. What did you find?

A I found again that when one looks at the precise changes in the districts, that the consequential changes favored the Republicans over the Democrats.

Let me cite an example here. If you go down four rows to District 4, we can look at Representative Hart. Under the existing plan, Representative Hart was able to win the election in a district that leans Democratic. That is 52 percent on average Democratic.

Her new district, however, drops the Democratic

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percent in terms of our statewide average which remember has essentially a one to one correspondence with Congressional results. It declines in its Democratic percentage by 3.4 percent or correspondingly improves in its Republican percentage by 3.4 percent. So in her new district, she has instead of a 52 percent Democratic majority, a 48.6 Democratic minority or a 51.4 percent Republican majority. So her prospects are improved in the new district.

If you go down almost down to the bottom, if you look at again on the left the 1992 plan, we see in District 20, there is a Democrat Representative Mascara who won election in a Democratic district. He is a Democratic representative, a district that on average had a percent Democratic 54.4 percent.

In contrast to Representative Hart, who had her district improved by over three percent in its partisan alignment, Representative Mascara experienced nearly an eight percentage point drop in the percent Democratic in his district.

His district declined by 7.6 percent in its Democratic percentage going from a district that was 54.4 percent Democratic on our 19 election average to a district that was 46.8 percent Democratic or correspondingly 53.2 percent Republican.

Q You mentioned an open seat issue. What does Table 1

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reflect on the open seat in Act I?

A One way to offset the party which is being disadvantaged by the treatment of incumbents like we see here is by creating open seats that give that party a significant

opportunity to win; open seats that tend to lean in favor of the party disadvantaged by the pairing.

We do not find that, however, for the Act I Plan. There is an open seat created, but it is a Republican leaning, not a Democratic leaning open seat and thus reinforces, rather than offsets, the effects of the pairing.

The open seat is right at the very bottom on the right-hand side District 6 opened under the Act I Plan, it is the very last district listed there. And on average, across 19 elections, its Democratic percentage is not a majority, but rather a minority 44.5 percent. Correspondingly, this district is over 55 percent Republican based on our 19 election average.

Q Let me ask you to turn over to Table 4 in Exhibit 12 and report on how alternative format rates with respect to the issue of pairing and changes in districts?

A Yes. With respect to pairing, we can see, first of all, looking at Table 4 if we go down about to the middle of the table under Alternative 4 and look at new district 19 under Alternative 4, there is a same party pairing of two Republicans, Representative Shuster and Platts.

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Likewise, if we go down about five or six additional rows and look at District 18 under the Alternative 4 Plan, we see two Democrats are paired Coyne and Doyle. There are no cross party pairings, and there are no open seats.

So the result of the pairing analysis is two Democrats are paired and two Republicans are paired, a different picture from what we saw under the Act I Plan.

Q Changing the districts, how does that work out in this plan?

A Again, that does not appear to be targeted toward one party or the other. The consequential changes in districts go in both directions.

Just to cite some examples, if you look at District 3 under the Alt. 4 Plan, we find a Democrat Representative Borski whose previous district was reduced by 4.5 percent. It fell from 59.5 percent Democratic to 55.0 percent Democrat.

If we look next at Representative Hart in District 4 -- remember, she was the Representative who had won in a Democratic leaning district -- her district is very substantially improved. It dropped 6.9 percent in its Democratic percentage all the way down to 45.1 percent. So there we see a Democrat disadvantaged, a Republican improved.

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If we go all the way down to the very bottom and look at District 9 under Alt. 4 where we find Representative English, he is slightly disadvantage. He is a Republican. His district increases by two percentage points going from 47.7 to 49.7 in its Democratic percentage. It still is slightly Republican leaning, but less so than previously.

So we have a mixed picture in all four as compared to the more uni-directional picture in Act I.

Q Did you also study the extent to which the incumbents in Act I would retain their existing constituents?

A I did.

Q Can you tell us why?

A We had talked about the treatment of incumbents being important because incumbents have significant electoral advantages. One component of that electoral advantage is establishing a personal relationship with your constituents.

So to the extent to which you can retain previous constituents, previous population in your new district, that is an advantage. You are dealing with the same people with whom you have previously established a personal relationship.

To the extent your previous constituents are removed from your district, that is a disadvantage because you lose the benefits of the personal relationship that you established with those constituents.

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So another way of looking at the treatment of incumbents is to see whether or not there are differentials in the treatment of Republicans and Democrats with respect to the retention of previous constituents.

Q Let me ask you to turn over to Table 8 which I think is relative to this issue.

A Yes.

Q What does it show?

A It shows that in addition to the other incumbent effects that we have discussed, the Alt. 1 or as it is called Conference Plan there --

Q Act I you mean?

A Act I, excuse me. I get my Alt.'s and Acts mixed up. Act I, the enacted Plan which is labeled Conference Plan, is the first row of the table shows that in districts where there are Republican incumbents, they retained approximately 76 percent of their previous constituents. Whereas in new districts where there are Democratic incumbents, they retained on average approximately 51 percent of their constituents.

So the two parties were not being treated equally. Republicans retained 25 percentage points more of

their constituents than Democrats or in percentage terms 50 percent more.

Q What did you find on the same issue with respect to

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Alternatives 3 and 4?

A With respect to Alternatives 3 and 4, there was some advantage to the Democrats, but it was much smaller than the 25 percentage point gap in Alt. 1 -- excuse me, Act I. In Alternative Plan 3, Republicans retained approximately 60 percent of their constituents. Democrats retained approximately 66 percent for a gap of six percentage points.

And in Alt. 4, Republicans retained approximately 55 percent, and Democrats retained approximately 63 percent for a gap of eight percentage points.

Q Let me ask you to turn over to Table 12 and tell us what it tells you about retention of existing constituents?

A Table 12 simply breaks out the data that was summarized in the previous table to look at the retention of the constituents in individual districts. And in a few cases, this analysis is important because it does give further insight into the treatment of some of the incumbents.

Q Can you give us an example?

A Yes, a couple of examples. If we are to go down to District 17 under the Conference Plan, it is about six rows down, that is the district that paired Holden, the Democrat, and Gekas, the Republican. It is matched on that row to Holden in his previous District 6. He retains 39.1 percent of his previous constituents in the new district in which he is paired.

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If you go down almost to the bottom of the table, we trace the same number for Representative Gekas. That is we track new District 17 to Representative Gekas' old district, and he retains 60 percent of his previous constituents.

So in addition to that district having a voting record favorable to Republicans, it also gives Mr. Gekas an advantage in terms of the retention of previous constituents.

Another example comes right below that. If one were to go down under the Act 1 Plan to District 18 where there is Mr. Mascara who previously was located in old District 20, we can see that Representative Mascara retains only 44 percent of his previous constituents. When combined with a loss of 7.6 percent Democratic strength in that district, this further imposes an electable burden on Mr. Mascara retaining less than half of his previous constituents.

The final example would come from District 13, if up just a third of the row. That is the district that pairs -- one of the districts that pairs under Act I two Democrats Borski and Hoeffel. We can see Mr. Borski retains 47.3 percent of his constituents in new District 13.

And then if we go down to the middle of the page and we trace Mr. Hoeffel, likewise he retains 47 percent of

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his previous constituents. In other words, the new district is split between retention by Mr. Hoeffel and retention by Mr. Borski. That means whichever one of these two Democrats emerges to be the candidate in that district, that Democratic

candidate, although he was previously an incumbent, will have the benefit of less than half of his previous constituents making it more difficult for that candidate to prevail in that district.

Q Let me ask you to turn back to Table 6 and touch on the issue of compactness. Can you tell us, first of all, why did you look at the compactness of the districts?

A I looked at compactness and a number of other factors such as county and municipal splits for several reasons. First of all, these can be indicators of a plan that is not fair to the two parties.

You can measure partisan fairness by its own right. Certainly nothing about compactness or municipal splits or county splits proves that a plan is not fair on a partisan basis, but they can be indicators.

Secondly, I looked at them because conceivably one might want to justify a plan on the basis that the plan was pursuing value such as compactness and minimizing county, municipal and the precinct splits. I wanted to see if that was true of the Act I Plan as compared to various alternative plans that I analyzed.

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Q Can you explain the two different kinds of compactness scores that you reported here for each district?

A Yes. These are two standard compactness scores that are used by analysts to compare the compactness of different plans. The first is labeled DISP or dispersion. That essentially measures the geographic spread of a district. And it is the ratio of the area of the district to the area of the smallest circle circumscribing that district. So it measures departure from that circular shape.

The lower the ratio, that is the smaller the area

of the district as compared to the area of the smallest circumscribing circle, the less impact on that measure. So the smaller the dispersion score, the less compact on that measure is the district.

The second measure is known as the perimeter measure. It is less a measure of geographic spread or dispersion than it is a measure of irregular borders of a district.

It likewise is a ratio. It is the ratio of the area of the district to the area of a circle that has the same perimeter of the district. So if you stretched out the district and made it into a circle, you would take the ratio of the area of the district to the ratio of the area of the circle. And, again, the smaller the number, because it is a ratio, the less compact on a perimeter measure.

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Q What did you find with respect to the comparisons of compactness reported in this table?

A I found that looking at the 1992 Plan, the Act I Plan, and Alternatives 2, 3 and 4 that based upon both of these measures, the Act I Plan was the least compact.

If you look at the very last row of Table 6, that gives mean scores averaged across all of the districts. Remember the lower, the less compact. And the Conference or Act I Plan on average has lower scores for both measures than any plan.

I also looked at the minimum -- that is the least compact district in each plan based upon the dispersion and the perimeter measure. I found likewise the Conference or Act I Plan had a district that based on either measure was less compact than the least compact district of any of the other plans to which I compared it.

Q Finally, let me ask you to look at Table 7 and report what you did there.

A Pardon me?

Q Table 7?

A Table 7 is a summary table which includes the dispersion and perimeter scores that we already examined, as well as scores for the 1992 Plan, the Act I Plan, and the Alternative Plans for county splits, municipal splits, precinct splits and total population deviation.

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Q Is there an area you wanted to correct on this table?

A Yes. These scores were supplied to me. And my understanding is I have all three too high on population deviation. As Mr. Priest indicated this morning, I have it at 19, but the correct number should be 17.

JUDGE NYGAARD: Where are you looking?

A I'm sorry. I am on Table 7. All three -- the column that reads all three plans, it is about four in from the right.

THE COURT: Okay.

A The very last number should be 17, not 19.

BY MR. SMITH:

Q What does this table tell us about the Act I Plan and how it compares?

A If we look first at the number of county splits, we can simply read this table across the row, and we see that the Act I Plan has the most county splits tied with the Alternative 4 Plan. Both those plans have more county splits than the other plans to which they are compared, but they are the same at 25.

With respect to municipal splits, if we read across the next row of the table, we see the Act I Plan has

65 municipal splits. The plan with the next highest number of municipal splits is the Aft. 4 plan with 42. So the Act I Plan has 23 more municipal splits than the next plan with the

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highest number of municipal splits.

If we look at precinct splits -- that is our next row -- we see that the Act I Plan has six precinct splits. That is three more than the 1992 Plan, and all of the Alternative Plans 2, 3 and 4 have zero splits.

Finally if we look at population deviation, the Act I Plan has 19 person deviation, which is less than the 1992 Plan, but with the correction more than Alternative 2, 3 or 4. Alternative 4 I believe has the mathematical minimum possible in Pennsylvania.

Q Can you just summarize for the Court your overall conclusions about the partisan fairness of Act I?

A Yes. It is clear from multiple analyses that Act I does not treat the two parties equally, but rather on every measure is quite significantly tilted in favor of the Republicans.

On a seats votes analysis where the parties are essentially evenly divided across all districts, under the Act I Plan, the Republicans have a majority based on the averages in 74 percent of the districts, a 24 percent bias or four and one-half seats larger than any of the other plans.

With respect to the treatment of incumbents, the Act I Plan pairs four Democrats and no Republicans. It pairs a Republican and Democrat in a district based both on retention of constituents and average votes that favored the

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Republican. And rather than providing an open seat that creates opportunities for the party disadvantaged by the pairing, it creates an open seat that leans to the Republicans. You do not have comparable disadvantages to one or the other party in the Alternative 4 Plan.

In addition, there are specific targeting of incumbents who are not paired to consequentially improve Republicans and consequentially diminish Democrats in terms of their electoral opportunities.

Likewise with respect to the retention of previous constituents, the Plan by a 25 percentage point margin favors Republican as opposed to Democratic incumbents. This partisan tilt to the Plan cannot be explained by the fact that the Plan is better than alternatives on compactness, county splits, municipal splits, precinct splits. Rather, the Alternative Plans are better on all of those measures.

In addition as compared to the alternative plans, the Act I Plan has a greater population deviation.

MR. SMITH: No further questions, Your Honor.

JUDGE NYGAARD: Mr. Krill, you may examine.

MR. KRILL: May I have just a minute, Your Honor?

JUDGE NYGAARD: Yes.

MR. SMITH: While he is thinking, I believe I should have moved into evidence Exhibit 12 which are the tables.

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MR. KRILL: Your Honor, I would like to cross on Exhibit 12.

THE COURT: Very well.

CROSS EXAMINATION

BY MR. KRILL:
Q Dr. Lichtman, calling your attention to Plaintiff Exhibit 12, the bottom row of your table where it says sum –
JUDGE NYGAARD: Which table?
BY MR. KRILL:
Q Table 1, first page of Exhibit 12. Forgive me, Your Honor. The bottom row it says sum. 71nd in the third column from the left, there is a percentage 50.3 percent?
A Correct.
Q Is that a percentage of votes or an average of percentages?
A It is an average of the percentage in each of the 21 districts.
Q Let's go up that column there, the 21 districts, let's start with District I. The figure 79.7 percent appears as the percent Democratic voting strength for District I; correct?
A Correct.
Q How is that percentage figure arrived at?
A That is the 19 elections averaged for the precincts in District 1 from 1991 to 2000.

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Q If we go to Exhibit 13 –
A Is that in my book?
MR, SMITH: I believe it is.
BY MR. KRILL:
Q Go to page Ii of Exhibit 13.
A Yes. Table Ii?
Q Page 11.
A I am not sure what these pages are. They are handwritten in?
Q Handwritten in.

A Got it.
Q On the side?
A Yes.
Q Page 11 in Exhibit 13 has sets of -- two sets of figures. It has actual -- purported actual votes, and then it has percentages in the second set at the bottom half of the page. Do you see that?
A Yes.
Q For purposes of producing the 79.7 percent that you show on Table 1 of Exhibit 12 for District I, what did you average? Did you average the actual vote numbers on page eleven of Exhibit 13, or did you average the percentages on page eleven of Exhibit 13?
A As I explained to you in our last colloquy, I didn't use those percentages on the bottom at all. I did my own

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calculations using just the votes for Democrats and Republicans.
So for the President 2000, I would have taken 182,154 divided by the sum of 31,717 plus 182,154. I would have performed a similar computation for each of the 19 elections and then averaged them.
Q You would drop the other?
A Yes. So we are just looking at Republicans versus Democrats. As I explained in my direct, the two would be mirror images of one another.
Q So what you did was actually take the numbers, turn them into percentages and then average the percentages?
A Correct.
Q Isn't that what the bottom half of the page does?
A No. The bottom half of the page does not compute percentages the same way I did because the bottom half of the

page uses the other as well. It is not a big difference, but there is a small difference.

Nor did I verify any of those numbers since I didn't use them.

Q All right. So what you did was take the top half of the page and convert the voting figures given on page eleven of exhibit 13 into percentages?

A Correct.

Q Now that means, doesn't it, Dr. Lichtman, that when we

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turn back to Plaintiff Exhibit 12 and look at District I?

A Yes.

Q Looking at the third column percent Democratic 1991 to 2000, each one of those percentages reflects a different level of turnout?

A No. All the percentages reflect the same level of turnout because all of the percentages in that column are based on the same 19 elections.

Q Right. However, district by district when we look at Plaintiff Exhibit 13, page Ii, we can see that there is a different voter turnout in each district; can't we?

A That is correct.

Q In fact, there are some districts that have consistently a lower turnout than others; didn't they?

A We would have to look at that. If you want to present to me what those districts are and perform computations, I would be happy to look at it. But just eyeballing the table, you can't tell that.

Q So you didn't bother to determine whether there were differences in turnout on a district by district basis when you performed your computations; did you?

A There are differences by district in turnout. But my

computation is the average across all districts which is a standard way of performing this analysis because districts are not apportioned by voters. They are apportioned by

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population.

Q Right. You, however, are making a comparison or attempting a comparison based on voters, not on population. And let's just look, for example, on page eleven of Exhibit 13 at Congressional District 1.

A I am sorry. What page are we on?

Q Page eleven, Exhibit 13.

A Yes.

Q Let's just use what you use. Let's use the Republican and Democratic turnout. You see that Bush got 31,717; correct?

A Correct.

Q And Gore got 182,154; right?

A Correct.

Q Assuming those numbers are correct. If you add those two together, we get what roughly?

A 214,000. I am adding it in my head, but I think that is about right.

Q I think you are right. Let's take District 13 on page 11 of Exhibit 13.

A Correct.

Q You see that Bush got 117,000 approximately, and Gore got 156,00. If you add those together, what do you get roughly?

A 273 -- 274,000 approximately.

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Q Substantially a higher turnout in District 13 than in District 1 in Philadelphia?
A Indeed. These are two districts with Democratic incumbents in them that voted for Gore that had different turnouts, that's right. What you are going to find is a mix of Republican and Democrat districts with different turnouts that pretty much even out when you add it altogether.
Q Now let's go back to Exhibit 12. Table 1 of Exhibit 12 takes the low turnout in District 1 and displays that as a 79.7 percent Democratic strength; correct?
A Correct.
Q Table 1 of Exhibit 12 then takes District 13, which is a high turnout district in comparison?
A In that one election.
Q In that one election. And compares that to the 46.9 percent -- gives that as a 46.9 percent Democratic --
A Yes.
Q Now is it true that in order to reach your sum of 50.3 percent, at the bottom of the third column of Table I, that what you did was add the 21 percentages above it and divide it by 217
A Yes. The average Democratic strength in each district as compared to the number of districts won by Democrats and Republicans.
Q So you gave equal weight then to low turnout districts

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Lichtman - Cross

and high turnout districts for purposes of calculating your voting strength?
A Absolutely. That is the correct way to do it because you are interested here in partisan bias and separating out

partisan bias in turnout differences. But the truth is as you illustrated for me, some Democratic districts have high turnouts, some have low.
If I were to simply -- and you would never do it this way, but if I was simply to add up all the votes and average, it would come out not significantly different from a district by district average.
Q But you didn't do that; did you?
A I did it just as a check. That is not the proper way to do it as I just explained why.
Q You did not adjust for weight by turnout when you computed these averages that are showing up?
A No. You should not adjust for weight for turnout because you are separating out partisan bias from turnout differences. Remember districts are apportioned by population, not by turnout.
It is not particularly the case in Pennsylvania, but in many states, when you create minority districts, minorities tend to have lower turnout than other groups. That doesn't mean they get fewer districts as compared to their population because their turnout is lower.

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Lichtman - Cross

Q Dr. Lichtman, your Table 1 of Exhibit 12 isn't comparing populations. It is comparing voter turnout; isn't it?
A It is not comparing voter turnout. It is comparing the voter strength in individual districts compared to the average voter strength across all districts.
Q It is based on voter turnout, not on population; correct?
A It is based on the percentage strengths of each candidate in each district. Yes, there will be differences

in turnout across districts even though the populations are the same because some groups of voters turn out more than others. But in Pennsylvania, that would not be a consequential difference for the bottom line number.
Q Did you compare any of these districts to see whether any of them had consistently high turnout in Republican areas?
A Pardon me?
Q Did you look to see whether the Republican districts tended to have a higher turnout than what you call the Democratic districts?
A As I said when you average it out, there is not a significant Republican versus Democratic difference as you demonstrated with District 13.
Q You didn't do the averaging out; did you?

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A Yes, I did it as a check. I already told you that. I did not -- if you simply add the total numbers as opposed to averaging the votes, there is not a significant difference from the 50/50 mark.
Q You described your various checks to counsel in direct examination. You didn't mention doing any sort of averaging of votes across the 19 races on a district by district basis as one of your checks?
A It's not a check because in fact the proper way to do the analysis is to take the district by district average. So you are simply looking at partisan bias and not looking at bias that may be caused strictly by the fact that some groups of voters happen to turn out at lower rates than others.
Q Now you are trying to demonstrate partisan unfairness or fairness on a statewide basis; aren't you?
A Across all the districts, that's right.

Q So by weighting low turnout districts the same as consistently high turnout districts -- in fact by not even bothering to find out which are which, you have built into your analysis the potential for its your own partisan bias; haven't you?
A Quite the opposite. I have isolated partisan bias from bias that might naturally occur one way or the other to either party as a result of turnout differences. There's controls for turnout differences.

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If you did not so control, you may conclude that a plan was intended to be biased in a partisan way, when in fact the plan may have allocated persons as fairly as possible but there are natural turnout differences in some states between some population groups and others.
And the literature makes clear the need to separate out partisan bias from turnout effects which is precisely what I did here.
Q We have been talking about Table I of Exhibit 12. You used the same methodology for Tables 1 through 4 of Exhibit 12; is that correct?
A Correct.
Q Now Table 1 has two columns labeled REP OR DEM DIST, one for the 1992 Plan promulgated by the Pennsylvania Supreme Court and one for the Act 1 Plan; correct?
A Correct.
Q Let's look at the 1992 Plan where you have a column labeled REP OR DEM DIST. What you did was put in either a DEM or a REP based on whether or not the average that you calculated was on one side or the other of 50 percent; correct?
A Correct.

Q So that if a district by your analysis had a Democratic percent above 50 percent, you labeled it DEM. If it was below 90 percent, you labeled it REP or Republican; right?

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A Correct.
Q This methodology that you use was not something that you developed to actually predict outcomes; was it?
A It is closely correlated, as we already indicate d , with the outcomes of elections. But by itself, it is obviously not going to tell you who wins or loses a district. It is simply designed to indicate the effects of a redistricting.
You can stack a plan one or another in a redistricting, but you can ultimately guarantee the outcomes in every election.
Q Now let's see how your methodology correlates with historical reality, Dr. Lichtman. You used 19 statewide races. In those 19 races, how many of the winners were Republicans and how many were Democrats?
A I don't have that data right in front of me.
Q You have it in front of you in Exhibit 13 don't you? On page eleven, you could easily discern that?
A Looks like I would have to add up numbers I will if you want me to. It will take a couple of hours
Q Let me ask you to look at Exhibit 89. Is that still on the witness stand? You heard Mr. Priest testify about that exhibit this morning; didn't you?
A I did.
Q Exhibit 89 is basically the same as his page eleven. I am following Plaintiff Exhibit 13 except it has three rows

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added to it.
Now you can easily see who the winner and loser was in each of the 19 races by looking at those totals; can't you?
A Yes.
Q Now do you know who the Republican and the Democrat was in the Bush/Gore race?
A I do.
Q Bush was a Republican, and he lost; correct?
A Statewide?
Q Yes.
A Yes.
MR. KRILL: Now, Your Honor, I could go through this race by race, but the Court can do it as easily as I can.
JUDGE NYGAARD: Thank you.
MR. KRILL: I will ask the Court to take notice that there were twelve Republicans victories in the statewide races and seven Democratic races, twelve and seven.
BY MR. KRILL:
Q Now if you convert that into percentages, Dr. Lichtman, doesn't that roughly mean that the Republicans won 63 percent of the 19 statewide races and the Democrats won 37 percent?
A Assuming that is correct. I haven't verified that the percentages are right.

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Lichtman - Cross

Q So you did not do a reality check on your methodology?
A I did do a reality check on my methodology, a whole set of them. In particular what I looked at was -- remember these are averages -- the average Democratic percentage in

each of the individual districts with since we are interested in Congressional results, the actual outcomes of the Congressional results.

I found that 86 percent of the time the districts labeled DEM or REP correspondingly had a DEM or REP member of Congress in that district, that is an 86 percent correct correspondence, about as high as you generally get in social science. The three exceptions are all not especially surprising, Representative Hart in District 4 --

Q Dr. Lichtman, let me ask you to do a different kind of reality check. Did you go back and look at how many Republicans and Democrats actually occupy Congressional seats in the 21 districts that are illustrated on the left-hand side of District 12?

A Yes, that is right there. It is under incumbent, it shows which district is occupied by a Democrat, which district is occupied by a Republican. And then the very next column shows whether or not on average from my 19 statewide elections, the district had a majority Republican or a majority Democrat.

And except in the cases of Representative Hart in

District 4, Representative Holden in District 6, and Representative Hoeffel in District 13, the correspondence was exact. And as I said, these are not surprising exceptions.

You have two moderate to conservative Democrats winning in Republican leaning districts, and Melissa Hart, a very effective woman candidate, who had previously won in a Democratic Senate district winning in a narrowly leaning Democratic district.

Q You were just looking at the present here because you are talking about incumbents; right?

A Pardon me?

Q I say your analysis that you just went through for the past minute looks at incumbents, namely the present configuration of the Pennsylvania Congressional Delegation?

A Right. The most recent results we have because we are interested in the most recent reality since we are looking from the 2000 most recent elections across to the redistricting.

Q Yet you use 19 races that go back eleven years?

A That is correct.

Q Do you know how many Congressional races there have been since 1991 in Pennsylvania?

A I would presume about a hundred.

Q 105. I think the Court can take notice of that. Do you know how many times a Republican won in one of those

races and how many times a Democrat won?

A I haven't compiled all 105 races to check that, I would imagine Republicans have won more often than Democrats.

Q And you would be wrong in your imagination.

A Okay.

MR. KRILL: Your Honor, Defense Exhibits 60 through 65 which are the certification of election outcomes by the Secretary of the Commonwealth, of which the Court can take notice, show that there were out of the 105 races, 51 were Republican -- won by Republicans, 54 were won by Democrats.

A So they are basically evenly divided.

BY MR. KRILL:

Q Evenly. If you do the percentages, Dr. Lichtman, wouldn't you find that 51 out of 150 is less than fifty percent?

A Yes. 51 out of 105 -- I will do the exact calculation for you. I have got a calculator. 51 divided by 105 is 49 percent.
Q All right. And therefore if the Democrats won 54 out of 105 Congressional races over the time period you studied, that would be 51 -- they would have won 51 percent of the time; correct?
A Presuming all your numbers are correct. As I told you, I didn't do this analysis so I am relying on your numbers.

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Q You are aware, aren't you, that right now Pennsylvania's Congressional Delegation has eleven Republicans and ten Democrats?
A I thought there were 21 seats.
Q Yes.
A Is there one open at the moment?
Q Eleven Republicans and ten Democrats.
A Yes, that's correct.
Q But are you aware that that has only been the case for the past year since the November, 2000 general election?
A Right. Assuming your numbers are correct, it has been pretty evenly divided over the ten years between Republicans and Democrats, 51 to 49.
Q In fact, Dr. Lichtman, as the Court can take judicial notice, the official results show that until the 2000 general election, Pennsylvania had a delegation that was ten Republicans and eleven Democrats.
Let's compare that reality with your output here on Table 1 of Plaintiff Exhibit 12. You are saying given the leaning of those districts in the past decade under the Pennsylvania Supreme Court's Plan, you treat those districts as twelve leaning Republican and nine leaning Democrat;

correct?
A Correct.
Q So if the historical record shows that in fact for most

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of that decade, Pennsylvania's delegation was only ten Republicans and eleven Democrats, then you are off by two seats here in your bottom line sum in Table 1; aren't you?
A Which means being off by less than ten percent. That means over 90 percent accurate even assuming everything that you say, that is exactly correct.
But remember, my analysis goes through the 2000 election and is thus meant to apply to the current 2000 election. It doesn't make much sense to take an average that includes the 2000, 1998 elections and somehow apply it backwards to results limited to 1992.
Even if what you say is correct, the analysis still predicts within a less than ten percent margin of error.
Q In politics, a ten percent margin of error is typically the difference between winning and losing; isn't it?
A Not here because we have a four and one-half seat bias or a 24 percent bias. So even assuming -- which I don't assume -- you have this maximum error of about eight or nine percent, you would still wind up with a plan that was very heavily biased in favor of Republicans.
Q Now let's assume that your error of two seats in assigning partisan tilt to districts under the 1992 Plan is the same error that would apply to your assignment to partisan tilt for the Act 1 plan.

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A I can't accept that because as I told you I don't buy your presumption that the error is two seats because you have gone back to a period before the full set of averages that are used. No methodologist would take average from 1992 to 2000 and then apply it backwards to elections that occurred before elections that are in the average.

I would say it most accurately applies to the eleven/ten designation which at most would be an error of a single seat.

Q So if we apply that error that you -- that you say at most exists in your methodology of a single seat and apply that to Act I, now we have trimmed your partisan tilt assignment from 14 Republican, five Democrat to 13 Republican and six Democrat; right?

A No. We haven't trimmed anything because we don't know whether or not a Democrat will be or not able to overcome an unfair situation in the new redistricting, particularly in light of all of the other analyses that I applied to this.

But even if we can concede that point, it would still be a partisan bias in favor of Republicans at least three and a half seats or at least 18 to 20 percentage points which is extraordinarily high as redistricting plans go even taking into account if one wanted to that potential error.

Q So you are saying essentially that your use of 19 historical races is meaningless; that you just want to look

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at incumbency to determine the tilt of the districts?

A Absolutely not. I was quite careful in my testimony to say that one has to look at both. One both has to look at the tilt of the districts which created this 24 percent bias

or four and a half seat bias. One also has to look at incumbent's treatment.

What we have here is a double partisan gerrymandering that both is stacked in one direction in terms of the distribution of Republicans and Democrats into districts and then compounds that by the differential treatment of incumbents.

Q So you aren't concerned at all that your assignment of partisan tilt under the 1992 Plan twelve Republicans, nine Democrats has a big disconnect with the historical reality of who wins Congressional races in Pennsylvania; are you?

A Quite the opposite. It has a very strong connect with the reality of who wins Presidential elections. As I said, this is meant to apply to the current situation because I have elections through the 2000 cycle. And even assuming the validity of the analysis you are presenting, we have a discrepancy of but a single seat.

Q You have hear of the majoritarian principle; haven't you?

A I have.

Q What is it?

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A That is if you have a division of the vote that on average if fifty percent, then you would expect each -- in terms of each of the individual districts that half of them would have a majority for one party and half of them would have a majority for the other party. So neither party can win a significant advantage when they only on average divide the vote.

Q Aren't you really confusing your notion of partisan fairness with the majoritarian principle, namely who gets the most votes gets the most seats?

A Indeed. The two are not confused at all. What I am saying is you can measure partisan bias -- and this is done on a standard basis in the literature -- by looking at the 50/50 mark across all districts and seeing whether or not one party controls at that point significantly more districts than another party.

You can measure that quantitatively by looking at the number of districts the advantaged party has, and that is four and a half, or the percentage advantage, and that is 74 to 26 percent.

Q That 74 to 26 percent is really your simple math of when you count up the number of Democratic seats under Act I and divide by 19?

A The math by its very nature when you do this is simple.

Q That is what you did; right?

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A Of course.

Q Let's take a look at Exhibit 89 and see what that tells us about your analysis?

A Where are we now?

Q 89. Now I would like you to take a look at Exhibit 89. It is on the second page, the Specter/Lloyd race in 1998.

A Which page is it on, the third?

Q It may be.

A No, it is not on the second. I found it, anyway. Whatever page it is on, the 1998 Senate.

MR. KRILL: Excuse me, Your Honors, it is the third page.

A I am there.

BY MR. KRILL:

Q You can just go through here and count up how many

Congressional – hypothetical Congressional seats Senator Specter won versus how many his challenger Mr. Lloyd won; correct?

A Yes, you could.

Q Would you do that, please? Tell me how many Senator Specter won.

A It will take a minute. It is quick, but I count 17.

Q That might mean Mr. Lloyd won two of the hypothetical Congressional races; right?

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A Correct.

Q Now you note here in the totals, don't you, that Senator Specter beat Mr. Lloyd by about 1.8 to 1?

A Yes. I just did a quick calculation. He won well over 60 percent of the vote. That is precisely what you would expect. If you are winning over 60 percent of the vote, the individual Congressional Districts are going to tilt in your favor.

That is called kind of a balloon effect that is described in the literature. When you get a high percentage of the vote, you are going to win an even higher percentage of the Congressional districts because essentially unless you have got Democratic districts well above 64 percent, virtually all the districts will flip in your direction.

That is exactly what we see here. Two very heavily Democratic districts are the ones that Mr. Lloyd wins.

Q Let's dwell on that point that you mentioned. So you are saying that the number of seats that you take is not directly proportional in real life to the percentage of votes that you get; right?

A Yes. That is why you look at the 50/50 point where you

don't have to be concerned with this balloon effect because at the 50/50 point where the parties are essentially evenly divided you can measure whether or not they get an even

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number of seats.

What you would have to do if you got a 64 percent election is look at a lot of other 64 percent elections going the other way and seeing if the two parties weren't essentially the same number of seats. Fortunately here, we are able to compare at the 50/50 point here.

Q That is your contention, Dr. Lichtman. Looking here, there is no such -- in the Specter/Lloyd race, there is no such 50/50 breakout?

A That's right.

Q So in fact, Senator Specter wins a much higher percentage of the hypothetical Congressional seats than even his vote?

A That is exactly what you would expect.

Q So the seat harvest can be disproportionately greater than the percentage of votes?

A Right. But in a fair plan, it would be symmetrical so the seat harvest does not differ for the two parties. Here when we have the two parties evenly divided, we have the Republicans winning 74 percent of the seats on our 19 state average.

Q You just used that term win 74 percent of the seats, but you said earlier that you weren't attempting in Table I to predict outcomes? You weren't predicting wins; were you?

A If you would listen to the last part of what I said, I

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said based on our 19 statewide election averages.

Q So let's see if there is some partisan symmetry here. Why don't you look at Exhibit 89 at the last page the next to the last race, the Treasurer's 1992 race of Mr. Henry vs. Catherine Baker Knoll?

A Which race are we at?

Q Next to the last race in Exhibit 89, Henry versus Knoll?

A Right.

Q Do you see that one?

A Yes.

Q How many hypothetical Congressional seats did Mr. Henry win?

A Mr. Henry?

Q Henry.

A It looks like he won one.

Q That is what I got, too. He won one, and Mrs. Knoll won 18. Do you have who was the Republican and who was the Democrat?

A Probably Henry was the Republican. I am not certain.

MR. KRILL: The Court can take notice in Exhibit 60 through 65, it will be shown that indeed Henry was the Republican, Knoll was the Democrat.

BY MR. KRILL:

Q This time in this race your reaggregation of historical

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races by the new Act I Congressional Districts shows that a good Democratic candidate can sweep the Congressional Districts just as effective -- almost even more effectively than a good Republican candidate; correct?

A Because you are at 64 percent, remember, and unless you are packing Republicans like you have packed Democrats into a small number of districts, unless you have got districts over the 64 percent mark, those districts are going to flip to the Democrats when the Democratic percentage is 64 percent. That doesn't help you understand what goes on in terms of the packing and fracturing of Congressional Districts.

However because you don't get margins like 64 percent in favor of one or the other party in Congressional Districts, you have picked out a couple of extreme elections which, of course, are going to flip the great majority of districts one way or the other.

Q Yes, but that analysis -- contrasting those two extremes, the one lopsided Republican victory and the other lopsided Democratic victory, as these races are reaggregated under Act I, it shows that under Act I, there are a few districts -- just a few that are hard core Republican or Democrat; right?

A NO. Because there are quite a number of districts that can be expected to go Republican or Democrat. There are only a few districts that are extremely packed Democrat or

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Republican with more packed districts disfavoring the Democrats.

Q Let's see. There are two districts that absolutely never go Republican under Act I; right? That is the first and second?

A Yes. And also the 14th might only under the most extreme circumstances.

Q The 14th being in the City of Pittsburgh?

A I believe that's right. 66 percent average Democratic vote.

Q And let's look at the Specter/Lloyd race in 1998 on Exhibit 89. District 14 in that race did go for the Republican Senator Specter; right?

A Yes.

Q In this hypothetical race?

A Yes, with a statewide candidate winning 64 percent of the vote. You had to get that extreme to have that district.

Q And let's look at the worst -- the paradigm of Republican defeat, the Henry/Knoll race in 1992. Only one District won by the Republican here, and that is the 16th Congressional District; right?

A Right, which is the most heavily packed Republican district. Finish there were no Republican districts packed comparable to Districts 1 and 2, and there was only one Republican district packed comparable to District 14.

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Q So District 16 by the way is centered on Lancaster County. Can you see it on the easel?

A Yes.

Q You are not familiar with the political geography of Pennsylvania; are you?

A No.

Q Would it surprise you, Dr. Lichtman, to learn that if you look at each of the 19 races as plaintiffs tried to reaggregate them in Exhibit 13 to show the outcomes under Act I that in each of those 19 hypothetical races for 19 Congressional Districts, that is 19 times 19 races, that in each one of those, the candidate who took the majority of votes statewide took the majority of Congressional Districts?

A We would have to look at the ones right around the 50 percent mark.

Q Would it surprise you to learn that in each one of these reaggregated races, the candidate under Act I who wins the majority of votes statewide wins a majority of the hypothetical 19 Congressional seats?
A That is possible if for the Democrats the majority is wide enough. Republicans can win overwhelmingly majority of these districts with a very slight majority. I do not know of any example where the Democrats under Act I have a slight majority and win a majority of the seats.

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If you want to point me to one, fine, but I do not know of one.
Q Let's take a look. Again, this is just math. And in fact, this isn't even math. We just have to eyeball the races in Exhibit 13 on page eleven and following or use Exhibits 89, and we can see what the outcomes were.
So let's start with Bush versus Gore in 2000. Gore wins the majority?
A I am sorry. I don't have the –
Q Let's use Exhibit 89.
A Bush v. Gore in 2000.
Q Bush v. Gore, we know -
A Let me check that. Okay.
Q How many districts did Gore win?
A Let's see.
Q Under Act 19 (sic)?
A Ten.
Q Gore won 10 of 19 seats?
A Yes.
Q So he won the popular statewide, and he also won a majority of hypothetical Congressional races under Act I?
A Yes.

Q The same is true for Clinton/Dole race in the '96; isn't it?
A I am sure that would be the case. It is a wide margin

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there. I also get ten despite the wide margin of Clinton's victory.
Q Well, try calculating Dole's. I got eleven. I am prepared to be corrected.
JUDGE RAMBO: I got eleven, too.
A We can continue on to the next one.
BY MR. KRILL:
Q The exhibit speaks for itself. Eight versus eleven is what I will represent to the Court that it shows. Again, Clinton widened the margin of victory; right?
A Yes, which is a closer election.
Q Governor in '94?
A Yes. And you count the number of seats won by Ridge, I get 14 or 15.
Q I get 14.
A That is closer than the Clinton/Dole election. That illustrates the point I was making. For a smaller percentage of the vote, the Republicans get a much more substantial share of the seats.
Q So it is 14/5. But it is still the majoritarian principle is followed; he who gets the most votes gets the most seats; right?
A Yes. But looking at the bias, you have got to look at the percentage of votes to the percentage of seats and see if it is symmetrical between the two parties. Here you have the

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Republicans winning a smaller percentage of the vote and several more seats.

MR. KRILL: Rather than go through each of these races with the witness, I will just give the Court my own numbers for these with your permission, Your Honor. And, of course, I am subject to being corrected by the Court or by counsel or in briefs or whatever.

I get the following for President in 1992, Clinton gets a majority of the vote. He gets eleven seats under Act 19.

For U.S. Senator in 2000, Santorum gets the majority of votes. He picks up fifteen seats. Klink gets four under Act 19.

For Attorney General in 2000, Fisher, the Republican, wins the majority of vote and picks up 16 seats under Act 19. His opponent Eisenhower gets three.

For Auditor General in 2000, Casey, the Democrat, wins the majority. He picks up 15 seats Congressional seats hypothetically under Act 19. And his opponent Drew, the Republican, picks up only four.

For Treasurer in 2000, it is the reverse. Haler, the Republican, wins the popular vote and picks up 14 Congressional seats. Knoll, her Democratic opponent, picks up five hypothetical seats.

For Governor in 1998, Ridge wins a majority of the

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popular vote. He picks up 16 seats. His opponent Itkin, the Democrat, picks up three.

For U.S. Senate in '98, we would have done that with the witness. For Attorney General in 1996, the

Republican Fisher wins popular vote and picks up 13 seats. The Democrat Kohn picks up six.

For Auditor General in 1996, the Democrat Casey wins the popular vote and picks up 14 seats under Act I. And the Republican picks up only five.

For Treasurer in 1996, again, it is the reverse. Hafer, the Republican, wins the popular vote and picks up 14 seats. Knoll, the Democrat, five.

For U.S. Senate in 1994, Santorum, the Republican, wins the popular vote under Act 19 -- or Act I. He would pick up 14 of the 19 Congressional seats. Wofford, the Democrat, picks up only five.

And for U.S. Senate in 1992, Specter, the Republican, wins the popular vote and would have picked up 13 Congressional seats under Act I. Yeakel, the Democrat, six seats.

For Attorney General in 1992, Preate, the Republican, wins the popular vote and would have picked up 13 Congressional seats under Act I; Coyne, the Democrat, six.

For Auditor General in 1992, Hafer wins the popular vote and would have picked up 14 Congressional seats

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under Act I. Lewis, the Democrat, five seats.

The witness has discussed with me the 1992 Treasurer's race. And the last race is the U.S. Senate 1991 special election Wofford, the Democrat, wins the election and would pick up eleven seats, and Thornburgh, the Republican, would pick up eight.

A Is there a question for me to respond to now?

BY MR. KRILL:

Q No, I was just informing the Court.

A You asked me about these, and I think I have a right to

comment on your --
JUDGE NYGAARD: Let's wait for a question.
BY MR. KRILL:
Q Now you, yourself, don't have the precinct by precinct results for the 19 statewide races that were used by Mr. Priest to put together the table on page eleven of Exhibit 13; correct?
A He provided me the precinct by precinct results.
Q He provided you with the full data set?
A I don't know if it is the full data set, but he provided me precinct by precinct results for Congressional elections and the 19 statewide elections.
JUDGE YOHN: Who did, Mr. Priest?
A Yes.

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BY MR. KRILL:
Q Those are not here in court today; are they?
A No. I didn't bring the huge stacks of printouts, no.
Q All right. Let's turn to Table 6 of Exhibit 12, Plaintiffs Exhibit 12.
A (Witness complies.)
Q Did you get these compactness figures from Mr. Priest?
A Yes.
Q You didn't run any of these numbers yourself; did you?
A No. As I said, the subsidiary analyses, these were provided to me.
Q So as we sit here today given the evidence that we have in front of us, you couldn't replicate these analyses; could you?
A I could given access to the software that they used, yes.
Q Given the evidence that we have here? You can't

replicate these analyses using Exhibit 13; can you?
A No. You would need the geographic software to replicate it.
Q You would also need a detailed description or assignment file to assign each of the area -- of the component areas to a geographic --
A You would need a map outline of each of the districts, correct.

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JUDGE NYGAARD: How is our cross-examination coming here? We are approaching three o'clock when we would be taking a ten minute recess. Are you going to move into a new area?
MR. KRILL: I am going to spend some time on compactness, but this would be a perfectly fine time for a break.
THE COURT: Why don't we take a ten minute recess and be back in our seats at ten minutes after three?
THE CLERK: Court is in recess.
(A recess was taken.)

AFTER RECESS.

ALLAN LICHTMAN resumes the stand.
JUDGE NYGARRD: Before you resume your cross-examination, I want counsel to think very carefully about how this case is being presented to the Court and how you are cross-examining.
There are things that I am finding out in the exhibits you have given us that we will learn by ourselves that we don't need testimony on. I am concerned that we are not moving this thing along as fast as it has to go to get what has to be done in the period of time we have allocated

not only for testimony, but also to make a decision.
If we don't get this done now, I don't know when

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we are going to get more testimony. I would ask counsel to think very carefully about how you are approaching this, and speed it along as best you can.
If there are witnesses that have some duplication, try to avoid that, please. It is going to not only help the Court, but it is going to help the effort as well. So if you want to bring something to our attention, do so. It will be on the record. Be assured we will take a look at it. We wouldn't have to do it through examination or cross-examination.
With that, let's resume.
MR. KRILL: Thank you.
BY MR. KRILL:
Q Dr. Lichtman, we were looking at Plaintiff Exhibit 12, Table 6.
A Yes.
Q I would just like to illustrate -- I would like you to illustrate for us visually let's say the dispersion method of compactness analysis. Let's take a look at Congressional District 12 under Act 1.
Do you see that on Plaintiff Exhibit 2?
A Yes.
Q It doesn't look very compact to the naked eye; does it?
A Let's separate dispersion from perimeter because what usually happens --

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Q Would you answer my question, please? It doesn,t look

very compact?
A I can't answer your question because there are two dimensions of compactness. You were asking me about dispersion. I think the appearance that you are referring to more reflects on the perimeter than the dispersion; although, to some extent it reflects both, but more the perimeter measure.
Q Well, looking at your Table 6, the perimeter measure, under Act 1 for Congressional District 12 is .218; do you see that? I am sorry, the dispersion.
A That is the lowest. Indeed consistent with our visuals, it is the lowest perimeter measure .053. In fact, it is the lowest perimeter measure on any plan for any district.
Q Let's look at the dispersion measure .218.
A Yes, it is also relatively low. I believe it is the third lowest on the Act I Plan.
Q But it is higher, isn't it, in terms of dispersion than the dead buffalo district in Plaintiff Exhibit 4, District 19?
A Which plan are we looking at?
Q Alt. 4 on Table 6.
A It is a little bit higher, .193 versus .218.
Q You don't know what algorithms were used to calculate

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the various dispersion and perimeter analyses that are here on Table 6?
A I don't know the specific algorithm, but I do know the standard calculations for these which I explained to the Court in my direct testimony. The dispersion measure is the ratio of the area of the district to the area of the smallest circumscribing circle.

The perimeter measure is the ratio of the area of the district to the area of the circle with the same perimeter.
Q Are you aware that Professor Richard Niemi identified 36 methods of calculating compactness?
MR. SMITH: Objection, Your Honor.
JUDGE NYGAARD: Why?
MR. SMITH: No foundation if Richard Niemi exists of who he is or where he is.
JUDGE NYGAARD: Sustained.
MR. KRILL: Well, the witness, Your Honor, is talking being standards.
THE COURT: Let's move on. Sustained.
BY MR. KRILL:
Q Let's turn to Table 7 in Plaintiff Exhibit 12. Did you prepare this table, Doctor?
A As I testified, I prepared the table. The information was provided to me.

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Q Was it provided to you in this format?
A I put it in this format, but these numbers were provided to me.
Q So you put it in this format. And did you assign the ranks that are here in Table 7?
A Absolutely.
Q You did?
A Yes.
Q All right. Now you have six different criteria that appear in the horizontal rows of Table 7; correct?
A Correct.
Q And then you rank them vertically by giving them numbers one through five; correct?

A There are five plans that I am comparing.
Q Right. What you are doing is trying to sum up the ranks for six different -- come to an aggregate rank using six different factors; correct?
A To show which plans come out better looking at all of the six factors. And you can look at each one of them individually by reading across the table.
Q Now reading across the table, in order for that to be meaningful, you have to assume that there are meaningful differences as you read across the table for each factor; correct?
A No. I am just looking at differences per se. I don't

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know what you mean by meaningful differences.
Q So you are not attributing any meaning to the differences for the different factors for each plan?
A I am attributing meaning. Remember what I was looking at was whether the Conference Plan as compared to the Alternatives was better on all of these measures to see if that could have been a justification for the construction of the Plan.
In addition, I was looking to see if these are potential indicators of a partisan gerrymander which, of course, I established with different and direct methods. So my concern was simply to see where the Conference Plan fell comparatively to other plans.
Q Let's look at your first compactness dispersion being scored. You have five different plans, five slightly different scores; correct?
A Five different plans, five different scores.
Q There is no statistical significance to those different scores; is there?

A There is indeed statistical significance to all of them because, remember, these plans were constructed based on 9,400 and some odd precincts. That is what reflects these scores. And they were not, of course, a random sample. They were consciously constructed by plan drawers.

Indeed, the differences among these plans is both

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substantively and statistically significant.

Q You are aware, aren't you, that in the professional literature compactness has been criticized as a factor that can actually be used to hide discrimination?

A Run that by me again.

MR. KRILL: Would the reporter read my question back, please?

(The question was read by the reporter.)

JUDGE NYGAARD: We are not involved in a discrimination situation here. What are you heading for here?

MR. KRILL: I had a standing objection to relevance. I agree we are not supposed to be into this area at all. I think the witness is talking about some form of partisan unfairness.

THE COURT: Unfairness, yes. What kind of discrimination? What are you getting at here?

MR. KRILL: Let me rephrase the question.

BY MR. KRILL:

Q Dr. Lichtman, have you reviewed the professional literature on compactness?

A I have read the professional literature, yes.

Q All of it?

A No, I wouldn't say I have read all of it.

Q There's a lot; isn't there?

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A There's a lot on all of these issues.

Q And is it fair to say simply that there is also a vigorous debate in the professional literature about the formulation and the uses of compactness analysis?

A There are debates in the literature.

Q Thank you. You also ranked these different factors vertically, but they are apples and oranges. You are trying to rank apples and oranges?

A You often do that when you have multiple indicators of a common factor. They are different, but they are put to the same two purposes that are already indicated to you as possible indicators but not definitive proof of partisan bias and secondly as possible justifications.

Therefore, it is useful simply to see where the Conference Plan ranks relative to the other plans. And no matter which factor you pick, it ranks either right at the bottom or close to the bottom.

Q Let's just use an analogy. Let's pretend that we are trying to compare, you and I, using your methodology; all right? And let's say that I have a 1960 DeSoto with big tail fins, and you have a Toyota.

On a measure of compactness, let's say I get a five, and you get an one. Do you see where I am heading?

A No, I don't. Not in the slightest.

Q Now the DeSoto would be less compact than the Toyota;

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wouldn't it? It always was.

A I suppose.

Q Fair enough. And let's go to splits. Let's say that I

have three divorces, and you have only one divorce in your past. So now you assign me a rank. I am at the bottom of the ranking. You are at the top again.

When we add all those up, what does a comparison of the compactness of cars and the number of divorces have to do with producing a common rank? It has nothing; does it?

A You have an inept analogy. Remember I said these are all put to a common purpose. A more apt analogy would be if our common purpose is the measure my socioeconomic standing relative to yours. And we looked at income. We looked at wealth. We looked at education. Those may be different factors, but they all go to the question of our socioeconomic standing just as these factors, while they are different, go to the common purposes to which I put them.

Q Well, the rank numbers that you use are simply arbitrary numbers; correct?

A No, they are not. They are based on the comparison of one plan to the other and therefore are not arbitrary, but reflect the ranking of the absolute numbers that I report on the table.

Q You could have used base five instead of base one to rank them; right?

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A But it would have come out the same.

Q You would have had a different source?

A No matter what base number I used, the Conference Plan still would have come at or close to the bottom. It is not an artifact of using one through five because there are five plans.

Q This kind of ranking system is used by Olympic --

A What?

Q This is similar to what Olympic judges use for ranking

athletes; isn't it?

A I have no idea the system used by Olympic judges so I can't comment.

Q There is nothing in the professional literature of political science that describes, much less peer reviews, something like your Table 7; is there?

A People do rankings all the time in the political science literature. I just gave you an example of a ranking on socioeconomic factors that might well be used in the social science literature.

Q Well, obviously social science literature will rank the same factor?

A No.

Q That is not what we are talking about.

A No.

Q I am saying is there any political science literature,

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that peer reviews a table such as Table 7 that takes different factors and attempts to rank them?

A Almost always, you are ranking different factors put to a common purpose. If they were all the same factors, there would be no point in ranking them. This is like a multidimensional scale commonly used in the social sciences.

Q Isn't it fair to say, Dr. Lichtman, this is something that you did, and you believe it serves a purpose, but a table like this has not been peer reviewed in the literature?

A Obviously, I didn't publish this particular table, but tables like this are used in the literature to rank, as I said, different factors going to a common purpose.

Q Can you cite one periodical that uses such a table that rank different factors and assigns common rank factors?

A As I said, I can't cite for this particular table. But

commonly within the social sciences, different factors like socioeconomic factors are ranked.
Q So the answer is that you can't cite it in the literature?
A Not to this particular table. I haven't published it.
Q Now in fact, your assemblage of methodologies has never been in its entirety as one package peer reviewed in the professional literature; has it?
A I have not published the particular testimony that I repaired today. But all the components of my testimony have

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been peer reviewed and discussed extensively in the literature.
Q But you just said you can't point to peer review literature for Table 7?
A I have not published Table 7. I agree.
Q Let's go to Table 8 on Plaintiff Exhibit 12. You can't calculate these percentages from Plaintiff Exhibit 13; can you?
A I have to look and see what Plaintiff Exhibit 13 is.
Q That is the set of numbers that Mr. Priest provided.
A You have to calculate it using the full set of 9,400 and some odd precincts because what you are looking at is the assignment of precincts to Congressional Districts.
Q All right. So you didn't actually do this calculation then in Table 8; did you?
A That's correct. As I said, this information was provided to me. I calculated the means and averages from the raw data provided to me, but I did not myself develop the raw data.
Q Are you saying you were given the raw precinct data by Mr. Priest?

A No. I was given the raw numerical totals, and I did the averaging and the calculation from that.
Q Are they anywhere in Plaintiff Exhibit 12?
A You mean the raw data?

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Q The raw totals. You just said you were given totals that were calculated from raw precinct data; correct?
A Right.
Q And the totals aren't here in court? Rather the raw precinct data aren't here in court today?
A No, but it is my understanding we provided you all the data upon which all my calculations are based.
Q That is not my understanding, Dr. Lichtman.
A Well, I believe I personally e-mailed you these numbers.
Q We do have those here. I would be happy to have you go through them and show me how they would provide you with the ability to perform these calculations. Shall we do that?
A I provided you what was provided me.
Q Would you care to admit that what you provided me would not enable you to perform these calculations?
A I did not myself perform the calculations in 9,427 precincts, that's correct.
Q And you didn't provide me with the data to do that either; did you?
A It was not provided to me,. But I presume that just as they have a political office, the Republicans have a political office. And I am certain since all these calculations were done on the Act I Plan, that the Republican side and Democratic side have the same information.

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You have your experts. And if you think there are problems, you could calculate your own results.
Q So your testimony is based on the presumption or let's say an assumption that the data you were given are correct; is that true?
A It is based on the presumption that the precinct level data that Mr. Priest compiled is correct, that's right. And on the fact that I have not anything from any other expert challenging questioning or contradicting it.
Q Let's turn to Table 9 of Plaintiff Exhibit 12. Did you prepare Table 9?
A Yes.
Q What did you use to prepare it?
A Again, that same precinct level data.
Q Which is not here in court today; correct?
A I do not have the stacks of precinct level data. It was compiled and provided to me.
Q Let's turn to Table i0 of Plaintiff Exhibit 12. Did you prepare Table 10?
A Yes.
Q What did you prepare it from; again, the same precinct level data?
A Yes. As I labeled, it is from the precinct level date.
Q Which is not here in court today; correct?
A I don't have it. I can't attest whether anyone else

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does or doesn't.
Q All right, now. This table says that you eliminated uncontested elections?
A Correct.

Q Now are you aware of how many uncontested Congressional elections – that is what it was you eliminated; right?
A Yes.
Q Congressional elections?
A Yes. I believe in one year, there are none. In other years, there are several. I think maybe up to four or five in some years. So it ranges from about none to I think about four or five and typically lower than that.
Q All right. Defense Exhibits 60 through 65, I ask the Court to take notice show that over the period of the decade in question, there were 16 uncontested elections. Does that sound about right to you, Dr. Lichtman?
A It sounds approximately right. As I said, it varied from none to about four or five. So 16 as a sum over -- how many elections did we say, 105? It sounds about right.
Q Let's turn to Plaintiff Exhibit 13. I think you will see this on about the eighth or ninth page. There is a list of 1992 to 2000 Congressional results?
A What page are we looking at?
Q I don't have a numbered set. It immediately follows a the page labeled 1992 plan splits. The page I ask you to --

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THE COURT: It is nine in mine if yours are numbered.
A I appreciate that, Your Honor. I could have been roaming through this for a long time. There we go.
BY MR. KRILL:
Q We can quickly count up the zeros on pages nine and ten in the Congressional results to count how many uncontested elections there were during this period; correct?
A Yes.
Q Is that 16?

A Do you want me to count? I am not disputing your number. One, two, three, four, five, six, seven, eight, nine, ten, eleven --

JUDGE RAMBO: What table are we on?

MR. KRILL: Page nine of Exhibit 13.

A I count 15, but I might have miscounted.

JUDGE RAMBO: Wait a minute. Excuse me. What table?

MR. KRILL: It is a table labeled 1992-2000 Congressional Results. It starts on page nine and then overlaps with page ten, Your Honor.

JUDGE RAMBO: Thank you.

JUDGE YOHN: Perhaps some of these things we can stipulate to.

MR. KRILL: It is all simple math.

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A I have no quarrel. I have no quarrel with your number.

BY MR. KRILL:

Q Okay. You didn't determine whether you were equitably – whether you were dropping an equal number of Republican votes and Democratic votes when you dropped the uncontested elections; did you?

A No. And that is not germane to the analysis.

Q Would it surprise you to learn that there were three times as many Republican -- races where Republicans were unopposed as Democrats?

A No, that would not surprise me.

Q Would it surprise you to learn that by dropping unopposed races, you actually dropped 1.7 million Republican votes and only 593,000 Democratic votes?

A No, that wouldn't surprise me. And as I said, it is

not germane to what I am doing here.

Q Let's turn to Table 11 of Plaintiff Exhibit 12. Those numbers by the way, Dr. Lichtman and Your Honors, can be calculated from Plaintiff Exhibit 13, pages nine and ten.

Table II, Plaintiff Exhibit 12, Dr. Lichtman, this is the only table that was generated using regression analysis; correct?

A Yes.

Q Now in doing regression analysis, it is an accepted

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practice in your field to report -

A Pardon me?

Q It is accepted practice in your field to report a constant?

A You might or might not depending on the purpose to which it is put.

Q Can you define a constant for the Court, Dr. Lichtman?

A Yes, in the regression equation with two variables as the formula Y equals A, a constant term that doesn't vary plus BX where B is the regression coefficient, in this case Y would be percent by precinct Democrat for Congress. X would be by precinct the means statewide vote. And therefore B would represent what I am looking at here, the change in Y for a one percent change in X. That is the change in percent Democrat Congress with change in percent Democrat statewide elections.

Q You don't have a constant report for Table 11; do we?

A No.

Q And again to compile Table ii, you used precinct level data that we don't have here; correct?

A I don't have it in my pocket.

Q Okay. Let's go to Table 12. Who prepared Table 12?

A I did.
Q What data did you use?
A I think we have already been through this. The

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precinct level data.
Q So we can't replicate your results here; can we?
A Yes, you can because I am quite certain that the Republicans have exactly the same precinct level data as the Democrats. That has been true in every state I have ever been in.
If you had any quarrel with any of these numbers, certainly your experts could have run them themselves. But I have yet to see any alternative numbers to a single number that I produced.
Q You heard Mr. Priest testify this morning; didn't you?
A Yes.
Q Did you hear him say that the issue of dead districts, change district boundaries was something that his office handled by making their own judgment calls about how to allocate voting results and population in the old precincts?
A Yes. And I heard, as I testified, it sounded like a standard procedure that I have seen in numerous states.
Q You don't know that Mr. Priest has shared his output with the Republicans; do you?
A No. But if the Republicans thought there was something wrong with what Mr. Priest produced, they could have produced their own to challenge it. And I have yet to see that either.
Q So that is another assumption on your part; correct?

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A It is not an assumption. I haven't seen it.
Q Well, you are assuming that they could have; isn't that your assumption?
A I am virtually certain given that there have been -- they would have to produced data for the plan that was passed, that Republicans have precinct level data and could do their own calculations on it. And that if there was some problem with this, something else could have been presented.
I am not a hundred percent certain, but I would say I am well over 90 percent certain that Republicans have precinct level data.
Q That is not based on your experience in Pennsylvania; is it? You don't work in the Legislature; do you?
JUDGE NYGAARD: Do we need to cover this ground? What am I learning? What are we learning from these questions is my question here? Mr. Krill?
MR. KRILL: Your Honor, the witness is quite certain of things that he has frankly no basis for being certain of. I will just move on.
JUDGE NYGAARD: If your point is that the data isn't in court, we know that. If it doesn't exist, perhaps we need another witness to say that it doesn't exist. This man hasn't seen it. I don't see where we are covering any new ground.
MR. KRILL: Your Honor, let me follow up on your

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statement. I have to say I cannot undertake to prove a negative. I can't prove data don't exist. It is the burden of the party with the burden of proof to demonstrate the affirmative of the proposition, and that hasn't been done in

this case.
JUDGE NYGAARD: Your point is though that because it is not in court, it doesn't exist I take it?
MR. KRILL: My point is that we have seen facial errors in the data. We have seen no underlying data base that would allow us to replicate.
THE COURT: Then you made your point. Thank you. You may proceed.
BY MR. KRILL:
Q Dr. Lichtman, Exhibit 13 was used by another witness for counsel in this case before you came onboard; wasn't it? You are aware of that; aren't you?
A I presume so. I am not sure what it was used for.
Q You know Dr. Lublin; don't you?
A You are talking about in another case entirely?
Q Yes.
A I can't vouch for what he used or didn't use in another case in which I wasn't involved.
Q Do you know Dr. Lublin?
A I do.
Q A colleague of yours at American University?

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A Yes.
Q And you are aware, aren't you, that he testified in Commonwealth Court using the same data that are in Exhibit 13?
MR. SMITH: It is not the same exhibit. It is utterly inappropriate for him to start cross-examining one witness on another witness' testimony in the midst of another trial.
THE COURT: Sustained.
BY MR. KRILL:

Q Dr. Lichtman, you didn't use all statewide races in Pennsylvania over the last decade in your calculations; did you?
A I used, as I said, all elections conducted at the same time, the same year as Congressional elections, plus one additional election for a position in Congress that was conducted in 1991.
Q Now answer my question, please.
A No. I was not aware of this, but I do understand that there are odd year judicial elections that are not in the same year like 1991, 1993, 1995. But I was also informed that that data does not exist in electronic form and thus is not usable, number one. And that number two, it is not a comparable type of election. That if there are more seats --
MR. KRILL: Objection. The witness appears to be

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going beyond the response of my question.
JUDGE NYGAARD: DO you want to restate the question. Maybe we can help him zero in on it.
MR. KRILL: My question was very simple.
THE COURT: Ask it again.
BY MR. KRILL:
Q You didn't use all the statewide races in Pennsylvania; did you, yes or no?
A No.
Q You have testified before, Dr. Lichtman; haven't you --
A Yes.
Q – that -- oh, many times. You testified to the effect that the more data you can get, the better; correct?
A That is only a general rule, but that doesn't always apply in particular situations.
Q You also testified in Michigan, didn't you, in the case

of Good v. Austin that --
MR. SMITH: Objection, Your Honor.
THE COURT: Let's hear the question first.
BY MR. KRILL:
Q – that you used several statewide elections for the State Board of Education because they were least likely to be influenced by controversial issues or high profile glamour candidates resulting in a truer indication of the voter's straight party preference?

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JUDGE NYGAARD: Overruled. We will hear the answer.
A I did use such elections among others in Michigan.
BY MR. KRILL:
Q And for that reason; correct?
A Yes. That and other reasons. They were also conducted at the same time, the same place as the Congressional elections.
Q And for an analysis like your did in Texas, you also used judicial elections; didn't you?
A I used all the elections conducted on the election year which included -- in the election year of the Congressional elections which included judicial among many others.
Q You are aware now that Pennsylvania has statewide judicial elections in odd years?
A Yes, but if I made explain --
Q Let me ask you a question.
A Sure.
JUDGE NYGAARD: Just a minute. You asked him a question. He answered it. Now you want to explain?
A I did, Your Honor, about these off year judicial elections. Number one, in off years, you have very different

turnout patterns of voters than you do in the years. And they are not available in electronic form. And they are multiple seat multiple candidate, not single seat elections.

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JUDGE NYGAARD: Next question.
BY MR. KRILL:
Q How do you know they are not available in electronic form?
A I asked Mr. Priest.
MR. KRILL: I move to strike that information as hearsay, Your Honor.
JUDGE NYGAARD: It's a very proper answer. You asked him how he knew it. He answered how he knew it.
MR. KRILL: Your Honor, this witness states facts that he would have the Court think he knows. And then we have to dig to discover what the hearsay is.
JUDGE NYGAARD: That is sometimes how it works out, counselor. You asked him a question, and he gave you an answer. You can't strike that. That is not hearsay. You are stuck with it.
MR. KRILL: Respectfully, Your Honor, as an matter of evidence, I don't think I am. I will stand on my motion to strike.
BY MR. KRILL:
Q Is it fair to say, Dr. Lichtman, that the Pennsylvania electorate over the last decade has been tending to become more Republican?
A I would have to see the data to prove that. I am not sure that is the case.

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Q So you don't know if there is a trend at all; do you?
A I am not aware of a significant trend one way or the other.
Q You haven't looked to see whether there is a trend?
A I did some sensitivity analyses on that. For example, redoing my analysis just based on 1998 and 2000 elections, and I did not find any significant difference in how the districts aligned in terms of the two parties.
Q You are talking about 1998 and 2000 elections?
A Yes.
Q But you didn't do such a sensitivity analysis for earlier elections to see whether there was a trend towards one party or the other; did you?
A But I already done 1992 to 2000. If there had been a significant trend, I would have found a difference between the average that covered the whole period and just spotlighting the last two years.
Q In Plaintiffs Exhibit 12, does one of these tables represent a sensitivity analysis that would disclose a trend over the last decade?
A No. I was just responding to your question.
Q So your analysis isn't here in any sort of hard copy form; is it?
A That's correct.
Q And you didn't provide it to the defendants prior to

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this hearing; did you?
A No.
Q Let's take a look again at Plaintiff Exhibit 13 at page 11.

A Did you say 11?
Q Yes, page 11.
A (Witness complies.)
Q If there are misplacements of numbers Congressional District by Congressional District in these reaggregations, you wouldn't be able to tell that; would you?
A In other words, if there are errors in the precincts underlying this?
Q Yes.
A You would not be able to tell this from that table.
MR. KRILL: May I have a minute to consult with counsel?
JUDGE NYGAARD: Yes.
MR. KRILL: I have no further questions.
THE COURT: Thank you. Do you have any redirect?
MR. SMITH: Just one question, Your Honor.

REDIRECT EXAMINATION

BY MR. SMITH:
Q Dr. Lichtman, can you refer to Defendant Exhibit 89 which is the individual statewide election?
A Yes.

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Q I believe you were going to comment so I will give you the opportunity. Is it your opinion that looking at these elections one by one leads to a conclusion that the districts drawn in Act I are fair or unfair in terms of their partisan impact?
MR. KRILL: Objection, leading.
JUDGE NYGAARD: You may give your opinion.
A Thank you. Your Honor, my opinion is that looking at them one by one and drawing what is called a seats vote curve which show essentially the same thing as my seats votes

analysis; that the plan is tilted in favor of the Republicans in that with substantially lower percentages of the average vote, they are able to get more seats.

For example in the Treasurer 2000 Hafer versus Knoll, that is virtually a 50/50 election. The Republican is ahead about 51, 49, and yet 14 of the seats have a majority of Republicans.

In contrast, for example, the Bush/Clinton election in 1992 where Clinton wins approximately 56 percent of the vote, much more on a percentage basis than Haler, and yet Democrats win only eleven districts; three fewer districts with five percentage points more than the vote.

And 56 percent is a very substantial percentage in terms of what you might expect in Congressional percentages which have been pretty close to the 50 percent mark in the

state of Pennsylvania.

So you have got to look at the disparity between seats and votes and not merely at whether whoever wins the majority wins the majority of the seats.

MR. SMITH: Nothing further.

THE COURT: Recross?

MR. KRILL:. Thank you, Your Honor.

RECROSS EXAMINATION

BY MR. KRILL:

Q With respect to that conclusion that you just rendered, Dr. Lichtman, have you tried to determine whether there is a significant difference between let's say the National Republican Party and the Pennsylvania Republican Party and their respective candidates and how well they run in Pennsylvania?

A Run that question, again. I am not sure I understood

it.

MR. KRILL: Would you reporter read it back, please?

A I actually think I understand the question or at least I can answer it as best I can having thought about it.

You recall in my direct testimony, I reported that I did do an analysis that eliminated top of the ticket that would limit the results strictly to internal Pennsylvania state candidates. I think we had ticked them off - Attorney

General, Treasurer and Auditor and found the same pattern of results.

BY MR. KRILL:

Q Well, you are not saying, are you, that there is such a thing as a generic Republican candidate or a generic Democratic candidate?

A No. What I am saying is when you look across all the 19 elections and you see that Republicans and Democrats are equally divided, you likewise see that Republicans have many more seats in terms of having a majority of that average than do the Democrats under Act I which was further illustrated by the testimony I presented in response to your cross.

Q Let's take a look. Let's compare one national Republican against a state Republican. Let's look at the Bush/Gore race and the simultaneous Santorum/Klink race. I would ask you to look at Exhibit 89 for that purpose.

A Okay. Are we looking at 2000 now?

Q 2000.

A Yes, indeed.

Q So in the same year, do you see Exhibit 89's results?

A I am there, counsel.

Q In the same year 2000, don't you have a national

Republican, namely Bush, losing Pennsylvania and a state Republican, namely Santorum, winning Pennsylvania by a margin that almost equals that of Vice-President Gore?

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A Precisely. And that is my point. In the 2000 Presidential election, which has the same margin as the Senate elections, the Democrats have a majority in ten seats; whereas in the 2000 Senate election, the Republicans have a majority in fifteen seats for a gap of five seats.
Q But in the very same election year 2000, do you see that in the Auditor General's race Auditor General Casey beats his Republican opponent and picks up 15 hypothetical seats?
A Yes, but he is beating his Republican opponent by about 64 percent; whereas in the U.S. Senate race, Santorum is beating his Democrat opponent barely and picking up the same number of seats. That is the point, the disparity between seats and votes which so heavily favors the Republicans.
Q Don't these statewide election results that purport to be reaggregated by you actually show that in Pennsylvania under Act 19, a good candidate can win any race, almost any race, except for let's say Districts 1 and 2 in Philadelphia if the candidate is a Republican?
A I don't see how these show that because these do not -- these particular tables do not track Congressional election results. We can look at that. But I said in my testimony, I am simply looking at the effects of redistrictings.
Redistricting does not cancel out politics. It is possible in the odd case that an individual candidate could

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overcome the adversity of redistricting.
MR. KRILL: I have no further questions.
JUDGE NYGAARD: All right. The Court may have some.
BY JUDGE YOHN:
Q You analyzed all of this in terms of the voting results for 19 elections. Have you done anything analyzing it in terms of party registration?
A I have not.
JUDGE NYGAARD: That was my question. Good question.
A I have not looked at party registration. I think voting results more closely correlate with voting results. And we saw through the regressions, there was a one to one correspondence between my statewide averages and my Congressional results.
So I am confident I have got a very good yardstick and don't need to turn to registration
BY JUDGE YOHN:
Q How do you know it is better if you haven't done it? How do you know that voting is better than registration if you haven't done registration?
A I don't -- I was speaking from general knowledge. What I do know is I already have a one to one correspondence. I am not sure how adding anything to that would improve the

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relationship.
MR. KRILL: Your Honor --
BY JUDGE NYGAARD:
Q Just a moment. Taking that one more decimal, if you

will, would you not learn anything more about these districts if you compared the voter registration and how they are partied up with the voters and how they vote and that sort of thing?

A I think you would learn some things. You would learn the relationship between registration and voting. And we know as a general proposition, it is not a one to one relationship.

We might learn here in Pennsylvania what the relationship is between registration and voting. So yes, you could learn that, but that was not the purpose of my inquiry.

Q You are saying it would add nothing to your opinion as to the fairness or unfairness I think was the ultimate question asked of you by counsel.

Would it add nothing to that; is that what you are saying?

A I am not saying it would be illegitimate to look at it. I have not seen anyone presented another analysis looking at that and suggesting anything different.

Q You have never done that in any of your other --

A No. I have never used voter registration per se as my

analysis that I can recall. A lot of states don't even have voter registration by party.

But to the best of my recollection, in all of the states I have actually looked at actual votes rather than -- but I wouldn't say if someone wanted to do that analysis, it would be illegitimate. I would certainly look at it. I have not seen in this litigation anybody having done such an analysis.

Q Because of the one to one correlation or almost –

A Almost.

Q -- with the --

A – Congressional vote.

Q – and the actual vote, you don't think that would add anything to your mix at all?

A I am not so arrogant to say doing something else wouldn't add anything. But I would say I am confident my results accurately reflect the purposes that I am looking at here.

JUDGE NYGAARD: That is fair enough. I have no further questions.

MR. KRILL: Your Honor, may I recross just to pick on the Court's question on voter registration.

JUDGE NYGAARD: No. We have done cross, recross questioning by the Court. You may step down.

A Thank you, Your Honor.

JUDGE NYGAARD: We still have some more time. How are we doing?

MR. SMITH: We have one more witness. We may have a very short one in the morning Congressman Mascara.

At this point, Mr. Spiva is going to call our next witness Larry Ceisler.

MR. SPIVA: Plaintiffs call Mr. Larry Ceisler.

LARRY CEISLER, called as a witness, being duly sworn, testified as follows:

THE CLERK: Would you state your name, please?

A Larry Ceisler.

THE CLERK: Thank you,

BY MR. SPIVA:

Q Mr. Ceisler, where do you reside?

A Philadelphia, Pennsylvania.
Q What is your educational background?
A I have a bachelor's in political science from American University in Washington, D.C. I attended the University of Pennsylvania School of Law and graduated from Duquesne University School of Law.
Q Can you briefly describe your professional background with an emphasis on your involvement in political activities in the state of Pennsylvania?

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A From the time I was a young boy in western Pennsylvania in Washington County, I was involved in politics. I was elected to the Democratic Mid-Term Convention at the age of 18. I was a delegate to the Democratic National Convention.

I worked on Presidential elections in 1976 as a volunteer for Birch Bayh and Morris Udall. I worked as a television producer in Pittsburgh KKTV in Pittsburgh where I did a lot of work on news and political issues.

When I moved to Philadelphia to work in television at KYW Television, I also worked in politics. When I left KYW Television, I went to work for a Mayor W. Wilson Goode. I was a Deputy Campaign Manager for his reelection effort in 1987.

A few years after that, I went to work in a partnership in a political consulting firm called Keystone Strategies. There we worked on several campaigns on all levels -- state, Congressional, local. I also worked -- I worked in Senatorial campaigns.

And from there, I started my own firm where I was doing some political work. For instance, I have a contract with the House Democratic Caucus as a communications consultant. I have worked in several campaigns since then.

But my practice now though it is political in nature is more issue oriented, grass roots lobbying, communications and advertising.

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Q What time span did you cover from when you graduated from American University through the present? Let me ask that a little more clearly.

When did you graduate from American University?
A 1979.
Q So you have been involved in political activities in Pennsylvania since that time?
A Since I moved back to Pennsylvania from Washington, D.C., yes.
Q When was that approximately?
A 1980.
Q And you mentioned that you have worked or consulted on a number of campaigns. Approximately how many campaigns have you worked and consulted on?
A Approximately 50 or more.
Q And were those positions generally paid positions?
A For the most part, yes. Sometimes, I would work for free.
Q And can you describe generally what you did for those campaigns, either consulting, managing, directing?
A When I work in a campaign as a consultant, I am responsible for all facets of the campaign though I don't work in the campaign on a daily basis. I have campaign manager there.

But what I do is I direct what the message is

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going to be, what the free press is going to be, what the paid media is going to be. We work at polling. We work at what the grass roots effort is going to be, what the get out the vote effort is going to be. Basically all facets of the campaign.

Q And have all those campaigns that you have worked on all have been within the state of Pennsylvania?

A Yes.

Q Have you only worked for Democrats?

A No, I have worked for Republicans.

Q Which Republicans have you worked for?

A I have worked for Senator Arlen Specter. I have worked for Councilman Frank Rizzo. I worked in a State Senate Campaign for Bruce Marks.

Q In those campaigns were you providing them with similar type services as you do with respect to Democratic candidates that you worked for?

A I wasn't a general consultant in those campaigns. It was a much more narrow focus what I did. But work that I did in those campaigns I would do in the Democratic campaigns.

Q Generally, what did you do for them?

A For?

Q For the Republican candidates.

A I helped them get Democratic votes.

Q You mention that you have been a political commentator

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on television stations. What do you do exactly in that role?

A For the past several years, I have been a paid political analyst for Fox television in Philadelphia. And then I am also used quite frequently by newspapers and

magazines around Pennsylvania and also around the country to be quoted and used as an analyst on political stories and governmental stories.

Q Do you ever have to do projections, the way you think various elections are going to come out in the state in that role?

A Yes. Sometimes they put me on the spot, yes.

Q What types of information do you look at in doing that?

A The same things I would look at in a campaign. I would look at polling data. I would be talking to people in those areas to see what they say, what is happening on the ground. I would be talking to the campaigns.

I would be reading newspapers. I would be looking at how much people have raised. I would be looking at what the candidates are like themselves, what the issues are, whether there is an incumbent running or not, what are the characteristics of the area.

I would look at voter performance. I would look at voter registration.

Q And are those the types of things that you have been looking at in your various roles in Pennsylvania and various

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parts of the state over the last twenty years?

A Yes.

Q Mr. Ceisler, you have been retained as an expert to do a political analysis for the plaintiffs in this case?

A Yes, I have.

Q What were you asked to do?

A I was asked to look at data and to project who or what party would prevail in the 19 Congressional Districts as drawn by the Conference Plan.

Q Were you only asked to look at data?

A No. I was basically asked to -- just as I would do on TV or in a campaign, to look at these elections, to look at the areas and see how they would -- people would vote there.

So it is a little more than hard data. It is the characteristics of the area, the people who are running, elements such as that.

Q I take it you are familiar with Act I which is up on the board there, Plaintiff Exhibit 2?

A Yes, I am.

Q What did you conclude about the likely impact of this map if it is allowed to be used in the upcoming Congressional elections?

MR. KRILL: Objection, Your Honor.

JUDGE NYGAARD: Reason?

MR. KRILL: I don't believe that they have

established a foundation for this person to offer opinion evidence. I don't think they have established a methodology, much less a reliable methodology, for him to render an opinion.

MR. SPIVA: Your Honor, we have had a Daubert hearing on this.

JUDGE NYGAARD: This has gone on already beforehand in your hearing before this one. Overruled. You may answer. Do you need the question restated to you?

A No. I think I understand it. I think this map is going to be good for Republicans in Washington, D.C. but bad for Pennsylvanians.

I think in terms of the numbers, they are either – it is either going to be fourteen to five Republican or thirteen to six.

BY MR. SPIVA:

Q Let me take those statements one at a time. What did you mean when you said you thought it was going to be good for Republicans in Washington but bad for Pennsylvanians?

A Pennsylvania is going to lose clout in Washington, D.C. One thing I didn't mention is that I worked in a Congressional office in Washington, D.C. I worked for Dr. Thomas Morgan who was a Congressman from southwestern Pennsylvania.

I see how the effect of seniority has on the process in Washington. And, for instance, losing Congressman Borski is not only going to be bad for southeastern Pennsylvania, but it is going to be very bad for the state as a whole.

I think it is also -- the way the map is drawn is counties are going to be split. Municipalities are going to be split. There's going to be a lot of competition for federal dollars. There's going to be areas that are going to be shut out of the process because they are far away from the base of the Congressman who I believe is going to be elected.

So I think all in all, it is going to be bad. It is going to be bad for the state.

Q Now let me turn to your opinion that this map will result in 14 Republicans being elected and five Democrats. Can you identify the five Democratic Congressmen that you think would be able to succeed in being reelected under this map?

A Congressman Brady and Fattah in Philadelphia, Congressman Kanjorski, Congressman Doyle, and the winner of the Mascara/Murtha race.

Q Why don't we start with the Murtha/Mascara race? As your answer suggested, I take it Congressman Murtha and Congressman Mascara are running against each other in the new

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Congressional District 12?
A That's correct, even though Congressman Mascara does not live in that district.
Q Okay. Congressman Mascara's home is actually in Congressional District 18; is that right?
A In Charleroi, that's right.
Q In your judgment, what are the political forces that led Congressman Mascara to run against Congressman Murtha in Congressional District 12 rather than Congressional District 18?
MR. KRILL: Objection, Your Honor. There is no foundation for that question. I think that the question is going to elicit hearsay from this witness.
JUDGE NYGAARD: Overruled.
A As a person who worked in Congress, I find it is astounding that an incumbent Congressman faced with redistricting would choose to run against another incumbent Congressman rather than run in what is a newly created seat.
So Congressman Mascara, he can't win in the seat where he currently resides.
BY MR. SPIVA:
Q Why is that?
A The Republican candidate is going to be Senator Murphy. And Senator Murphy is definitely a favorite of the Republicans in Washington, D.C.

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In fact, the Majority Leader of the Republican Congress Dick Armey is going to be coming to that district in a couple of weeks to campaign for Mr. Murphy. Mr. Murphy's seat is wholly contained in that Congressional District.
MR. SPIVA: May I just approach the witness, Your Honor, to put up an exhibit?
JUDGE NYGAARD: Sure, sure.
MR. KRILL: Your Honor, I move to strike portions of that answer. As I thought, there is no foundation for him to say who the candidate will be or for what a Republican in Washington will do. He just -- it popped out of his head.
JUDGE NYGAARD: Okay. I will overrule. We are noting your objections and we have the opportunity of parsing through this when we make our decision. Overruled.
BY MR. SPIVA:
Q Mr. Ceisler, what leads you to the conclusion that Senator Murphy is going to run in the new Congressional District 18? What is your basis for saying that?
A He has announced he is going to run. I read in the newspapers he is going to run. I don't think anybody is making it up. I don't think that the Majority Leader is coming to Pittsburgh to go to a Pirate game.
Q Now, Mr. Ceisler –
JUDGE YOHN: Especially in March.
A Opening day gets a little closer every year.

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BY MR. SPIVA:
Q I have put up on the board what has been marked Plaintiff Exhibit 2D. Can you identify that?
A That is the 18th District, and it shows how Senator

Murphy's Senatorial District is wholly contained in the district.
Q Now looking at that diagram, it appears that Senator Murphy's District is only a small geographic part of Congressional District 18; isn't it?
A Geographically, yes. But more people live in that -- that is suburban Pittsburgh. It is a dense population.
Q Okay. Might next question was going to be why given the relative size you think that Senator Murphy is likely to win that district?
A Well, Senator Murphy is likely to win that district because a Democrats from Washington County tends to be a more conservative, pro life voter is just not going to play well in the suburban district. Congressman Mascara represented parts of that district. He never did well with those voters.
The Democrats don't have even a candidate to run in that district.
Q What changes did Congressional District 18 make to the existing – the 1992 map in terms of the demographics of Congressman Mascara's District.

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Ceisler - Direct

A Traditionally, that district over the years has been a southwestern Pennsylvania district -- Fayette, Greene, Washington County. It has gotten a little more suburban over the years.
Basically what the district was, it was an older rural, conservative coal mining district.
Q Let me put up -- I better take one down before I try to put another one up. Let me put up what has been previously marked and admitted as Exhibit 1 which is the Plan -- the 1992 Plan.

Is that Congressman Mascara's current district under that plan, District 20?
A The 20th District, yes.
Q Do you know approximately where Congressman Mascara's home is in that district?
A He lives in Charleroi.
Q Can you point out about approximately where that is?
A It is around down here.
Q Just for comparison purposes, let me put up what has been previously marked and admitted as Plaintiff Exhibit 2 which is the Act I Plan.
Can you point again to about where Charleroi is on this map?
A It must be down around here somewhere because the district breaks. As Congressman Mascara testified in the

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Ceisler - Direct

State Court, if he goes across the street, he is in another district.
Q I am sorry to have you getting up and down. What portion of his district approximately has been taken out of – what portion of the district under the 1992 Plan has been taken out of his district under Act 1?
A They took out a lot of into the 18th, they took out a lot of Washington County.
Q Okay.
A Which was Congressman Mascara's base because he has been an elected official there since I was a little kid. He was County Controller and County Commissioner.
Q Now can you tell us the other Democrats who in your view would not succeed in winning reelection in addition to either Congressman Mascara or Congressman Murtha?
A They have put Congressman Borski together with

Congressman Hoeffel. Congressman Borski has announced that he is not going to seek reelection unless this map is thrown out.

Congressman Borski obviously, he knew he couldn't win, which I agree, because that district was set up for --

Q Let me stop you. We will go through the individual districts. If you can list the incumbents -- the Democrat incumbents that you believe would not win under Act I, and

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then we will go through them one at a time.

A Congressman Holden will lose reelection. You are also going to lose either Murtha or Mascara. And you will also lose - even though Congressman Coyne has announced his retirement, if that seat was intact, a Democrat would have run and won in that seat. So the Democrats would have lost that seat also.

Q Okay. What about -- you started to talk about the district. In terms of Borski -- Congressman Borski and Congressman Hoeffel, what is your opinion with respect to if either of those Congressmen are likely to be reelected?

A Congressman Borski, I do not believe -- I think he would have won the primary against Congressman Hoeffel, but he would have lost the general election.

Congressman Hoeffel if he wins the primary -- and we still have to see if a Democrat from northeast Philadelphia decides to run against Congressman Hoeffel. But Congressman Hoeffel is successful in the primary, I think he probably has a little better than a 50/50 chance of winning reelection.

That is why when I said the 14/5 and the 13/6, the 13/6 was if Congressman Hoeffel is successful in his

reelection.

Q Okay. That is in the new Congressional District 13?

A Yes.

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Ceisler - Direct

Q Is there a Democrat from northeast Philadelphia who announced that he is going to run assuming Congressman Borski doesn't change his mind?

A There is a Democrat who is strongly considering to run. I believe that is legitimate because I was very surprised when Congressman Borski announced his retirement last week, he did not endorse Congressman Hoeffel for reelection.

The reason he did not was because he wanted to keep the door open for another Democrat from northeast Philadelphia.

Q Okay. Stepping back for a minute, you stated you testified that Congressman Borski would have won the primary had he run, and that another Democrat from northeastern Philadelphia would likely win if that Democrat were to enter the primary.

What would the basis of that be? Why do you believe that?

A The majority of Democrats in the new district reside in northeast Philadelphia. And in primaries in Pennsylvania, the location where the person lives is on the ballot. And Philadelphians -- actually just like a lot of Pennsylvanians tend to be very parochial. They would have voted for a northeast Democrat. SO he or she would have beaten Congressman Hoeffel.

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Ceisler - Direct

Q Is there something that you have seen in your experience to support that view that Philadelphians would tend to favor the northeastern Philadelphian?
A Yes. Philadelphians -- in Pennsylvania, geography, whether it is statewide elections, it is very important. And people in northeast Philadelphia, they have - basically a lot of people leave Philadelphia. So the people who stay are pretty loyal to the city. They would vote for a Philadelphian.
Also that Democrat would tend to be a pro life Democrat. And those people in that district are pro life.
Q Assuming that you are correct and that a pro life Democrat from northeastern Philadelphia were to win the primary, why is it your opinion that he would lose the general election in the new Congressional District 13?
A Actually, I can put a name on that northeast Democrat. That would be Joe Martz, who is the former Managing Director of the City of Philadelphia.
The reason Joe Martz would lose is because then the district when you run in a general election, of course, it is a majority Republican district that tends to be moderate, tends to be pro choice, progressive. So someone from northeast Philadelphia would be out of sync with that district.
Again, a lot of those people who live in

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Montgomery County, they left Philadelphia. There is somewhat of a bias against Philadelphia by those people.
Q Now is there a Republican who is planning to run in the election – in the general election in the new Congressional

District 13?
A Melissa Brown is the Republican candidate who is favored by the party. She is the presumptive Republican nominee.
MR. KRILL: Objection, again, hearsay. Move to strike.
THE COURT: Overruled.
BY MR. SPIVA:
Q What is the basis of your saying that she is favored by the party?
A She has letters of endorsement from all of the region's Republican Congressmen, also from Senator Santorum. She is using Senator Santorum's media consultant to run her campaign. And also the Montgomery County Republican Committee is going to endorse her.
Q What is her position on abortion -- on the abortion issue?
A She is pro choice.
Q And what are her chances of beating a pro life Democrat from Philadelphia?
A Excellent.

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Ceisler - Direct

Q Let me put up another exhibit, a blow-up of the Philadelphia region. This has been previously marked as Plaintiff Exhibit 2A. Let me direct your attention to the new Congressional District 13. There are two incursions from Congressional District 8 into Congressional District 13, one right here around Hatboro?
A Hatboro.
Q I am not from Pennsylvania and Upper Mooreland and another one over here in northeastern Philadelphia I believe.

Have you examined those two incursions before, Mr. Ceisler?
A Yes. Congressman Hoeffel likes to call that the greenwood gash.
Q Is this what you are referring to here, this first incursion?
A I think it goes into Horsham if I am not mistaken. I would have to refresh my recollection and check the map.
Q Do you have an understanding of what the political effects of those two incursions are?
A Yes. They take Democratic voters away from the Hoeffel/Borski seat.
Q who is the Congressperson for Congressional District 8?
A Congressman Greenwood.
Q He is a Republican?

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Ceisler - Direct

A Yes.
Q So what is your analysis of the political effects that taking Democrats out of Congressional District 13 will have?
A Well, what they have done is they have taken -- they have taken strong Democratic performance areas, and they have really hindered the chances of any Democrat winning that seat.
Because what is going to happen in the Hoeffel/Brown race, it is going to be a close race. You take a few thousand people out who tend to vote Democratic, and you have hurt the Democratic candidate.
THE COURT: Are you going to be able to finish direct in about fifteen minutes, counselor?
MR. SPIVA: I think almost, Your Honor.
JUDGE NYGAARD: Okay. Good. Go to it.
BY MR. SPIVA:

Q Let me ask you for your analysis of the new Congressional District 17 which is also largely pictured on this map, the one I put the big map back up.
In this area, who are the two Congressmen who are paired in that new district?
A That is Congressman Holden and Congressman Gekas.
Q What is your analysis of who is likely to win that district?
A I believe Congressman Gekas will win that race.

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Ceisler - Direct

Q Why is that?
A That is for a couple of reasons. Number one, his district -- more of his former district is contained in the new district. That is number one.
Number two, the media market for that district is Harrisburg. And Congressman Gekas has represented Harrisburg so he has been a fixture on television here. So he has much better name recognition.
Q I think you stated this, but I just want to make sure the record is clear. How does the percentage of their old districts -- Representative Gekas' old districts and Representative Holden's old district, how does that compare in the new district?
A I believe it is 60/40 Gekas to Holden.
Q You mean 60 percent of Representative Gekas's former constituents are now in the Congressional District 17?
A Yes.
Q And just briefly, just pointing your attention to District 6 under this map, is that an open seat?
A That is a newly created district.
Q And has anyone announced their intention to run for that seat?

A There are a few candidates, yes.
Q Who in your view is likely to win that seat?
A Senator Gerlach.

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Ceisler - Direct

Q Why is that?
A Senator Gerlach, his district -- his district is in that district. Also, I believe a Republican will win that district. And Senator Gerlach will probably run uncontested in the primary.
Q Let me just to see if this illustration blow up helps. This is an exhibit which has been marked Exhibit 2C.
Can you explain to the Court which portion of the new District 6 coincides with Senator Gerlach's current house -- excuse me -- current State Senate District?
A It is the part in orange which is in Chester County which is going to become the political base of the district. The district goes unbelievably through the City of Reading to Lower Merion Township, which is a suburb of Philadelphia, through Chester County.
Q You say unbelievably. Why do you say unbelievably that it spans that distance?
A Because we are losing seats in Pennsylvania, and these map makers decided to create a new seat, number one.
Number two, there is not much commonality between the City of Reading and Lower Merion Township. Lower Merion Township has actually voted -- even though it is Republican Township, it has voted Democratic in a lot of elections. And the map makers obviously wanted to get that area out of the Hoeffel/Borski seat.

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Ceisler - Direct

Q Coming to your opinions about who is going to win these various districts currently held by Democrats, have you reviewed data on how statewide candidates have performed in those districts?
A Yes.
Q Are those data consistent with conclusions that you have stated today?
A Yes.
Q Have you also looked at voter registration data for the new districts under Act 1?
A Yes.
Q Did those data match up with the conclusions you have stated today?
A No.
Q Can you tell us in your opinion why they don't?
A Well, voter registration is not a real important element. Because as a political consultant, I find voter registration figures in Pennsylvania to be very unreliable for a number of reasons -- either motor voter, lack of purging.
I know when I send out direct mail, we get a lot of our mail back because people just aren't there. And also people a lot of times don't vote their registration. They are either too lazy to change, don't want to change. But that is just the case.

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Ceisler - Direct

Q Are there lot of Reagan Democrats in certain parts of the state?
A Yes, there are.
Q How could you define a Reagan Democrat?

A A Reagan Democrat resides in western Pennsylvania.
Q In terms of their political actions as opposed to where they live.
A They are Democrats who were basically FDR Democrats. Their parents were Democrats. They tend to be older. But they are also conservative. They are pro life. They are sportsmen, working class people. And Ronald Reagan captured them, and the Democrats have not been able to get them back.
But they don't change their registration. In a local race, they may vote Democratic. But in a national race, they will vote Republican.
Q Okay. And this next question which I think is nearly the last --
JUDGE NYGAARD: Great.
A It better be your last.
BY MR. SPIVA:
Q It may help to get the big map back up. This is Plaintiff Exhibit 2 which is again Act I, the whole state.
Do you have an opinion of what the likely political effects or what the effects this map will have on campaigns for Congress over the next decade if it is left in

place?
A I think incumbents are going to stay in place. So the people who win these elections unless they move on to other offices or retire, they are going to stay in place. These campaigns are going to become much more expensive because they are going to go across several media markets.
Ideally, you would have one Congressional district in a media market. The way it is drawn, you can look for instance at the Shuster seat which is number nine. You have the Hagerstown media market. You have Harrisburg, Altoona,

Johnstown and the Pittsburgh media market. That goes for several of these seats.
So what is going to happen is the bar is going to be very high for challengers because they are going to have to raise money, and it is going to be very hard to have name recognition.
Q And when you said at the beginning that incumbents were likely to stay in place, you mean incumbents who are currently in place or incumbents who are elected under the new map, Act 1?
A The incumbents who are elected under the new map.
MR. SPIVA: I have no further questions, Your Honor.
JUDGE NYGAARD: All right. This is a good time to adjourn for the day. I will give you time to load your guns,

and you can come at them in the morning.
We will adjourn at nine o'clock tomorrow morning when we will resume with the cross-examination of our witness here.
THE CLERK: Court is adjourned.
(Whereupon, the proceedings were concluded.)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, et al., :
Plaintiffs :
:
v. : NO. I:CV-01-2439
THE COMMONWEALTH OF :
PENNSYLVANIA, :
Defendants :

TRANSCRIPT OF PROCEEDINGS
REAPPORTIONMENT NONJURY TRIAL
VOLUME 3
(Pages 220 through 355)

BEFORE: HON. RICHARD L. NYGAARD, Judge
HON. WILLIAM H. YOHN, JR., Judge
HON. SYLVIA H. RAMBO, Judge
DATE: March 12, 2002
PLACE: Courtroom Number Two
Federal Building
Harrisburg, Pennsylvania

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JUDGE NYGAARD: Before we begin, what I would like counsel to do -- and you are well staffed at your individual tables -- is to assist the Court as we begin to prepare what you would propose to be findings of fact for this Court to consider.

We want you to begin - - as we go along, I was mentioning to my colleagues I am sure they do about the same things as I did. I just made up my findings as we went along. We can't do that inasmuch as we have to confer on

this and reach a consensus.
So it would be helpful to the Court if you do the proposed findings and conclusions of law if you want to and then your arguments that you want to make at the conclusion of the evidence in writing. So we can use the full day for testimony. We want these filed by 4:00 PM on Friday. You don't have a lot of time. That is why I suggest you begin as we go through the trial.
If there are no other items to come to the attention of the Court, why don't we just proceed with your cross-examination of this witness, Mr. Krill?
MR. KRILL: Yes. Thank you, Your Honor. There is one thing I would like to note for the record. I believe that by yesterday afternoon later in the day, I misspoke and referred to Act I as Act 19 several times. I don't think our General Assembly has gotten that high in its numbering this

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Ceisler - Cross

year.
THE COURT: It went unnoticed by me. I thought you were talking about the same law. Not a problem.
MR. KRILL: Thank you.

CROSS EXAMINATION

BY MR. KRILL:
Q Mr. Ceisler, who is paying your fee today?
A I believe Jenner and Block. I am billing Jenner and Block.
Q You say you believe. It sounds like you are not sure who is paying your fee?
A I have been told to submit an invoice to Jenner and Block.
Q Who will be paying it, out of whose pocket?
A I believe it is Congressional Democrats.

Q Now you described yesterday for THE Court things that you look at when you are trying to prognosticate about election outcomes. Do you recall that?
A Yes, sir.
Q And tell me if I misspeak or misremember. The first thing that you listed was polling; is that correct?
A When I am working in campaigns or I'm analyzing for television whatever, if I have access to polling, that is a good thing to access.
Q The second thing you listed was what people say; is

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Ceisler - Cross

that correct?
A Yes. I talk to -- I talk to people who are involved in the process involving campaigns. I talk to reporters. I talk to people who do fund-raising. I talk to the candidates themselves. Human intelligence is very key.
Q So is it fair to say that you rely on that to a substantial degree?
A Well, I think there were other elements that I mentioned also. Did you want to go down the list?
Q Yes. Newspapers?
A I read a lot of newspapers. With the Internet, you can read newspapers all over the Commonwealth on line.
Q And, of course, you give a healthy discount to the veracity of what you read in the newspapers; don't you?
A Well, I look at that through a filter. Everything is together, Mr. Krill. When you talk to people and you talk to somebody who tells you one thing and you believe them, and then you read something opposite in the paper, I tend to believe what I have heard.
But everything you do is taken together as through a filter.

Q So is it fair to say you don't believe everything you read in the newspapers?
A I think that would be fair to say.
Q Is it fair to say that you don't believe everything you

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hear on television?
A Except when I say it.
Q And when you are on television, do you ever engage in point/counterpoint counterpoint debates with people in your field about different opinions?
A Not on Fox I don't.
Q Have you done it in your career?
A I think one or two times I have been on some panel shows, yes.
Q And you have encountered people in your field who have different opinions than you do; correct?
A Of course.
Q You say you also look at issues?
A Yes, sir.
Q Issues are an important part of any political campaign; aren't they?
A One would hope they are.
Q Are they?
A I believe they are.
Q And you said you look at voter registration also?
A That is down on the list because I don't have a lot of confidence in voter registration figures in Pennsylvania.
Q Is that because Pennsylvanians are to a large degree ticket splitters?
A No. That has nothing to do with it. I think I said

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yesterday why I don't have confidence in voter registration. It is because of the factors such as motor voter, a poor purging effort on the part of the County Election Boards.
I think I talked about how when I do direct mail or telemarketing how you find a lot of the addresses are not good, and they come back.
Q You also find that sometimes those not good addresses end up voting on Election Day?
A I have never checked that.
Q And you are aware though in Pennsylvania there is a fairly large amount of ticket splitting that goes on; aren't you?
A Pennsylvania is probably not unlike any other state, but yes, sure.
Q So voter registration doesn't really tell you to a certainty whether a voter is going to vote for the party for which the voter is registered?
A That is one reason I told you that voter registration is really not an important criteria for me.
Q Yet at the same time, it is a criteria for you; correct?
A Sure. Sure.
Q Is that because not withstanding the ticket splitting and so forth, that at some point voter registration can become so lopsided that you would conclude in your field that

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a particular districts was unwinnable for the opposite party?
A Certainly. We do have a few of those districts in Pennsylvania. I think one of the problems with the map is that they have put so many Democrats in a few districts where

those districts are unwinnable for Republicans.
Q Now isn't there also an issue of geography? Where are most of the Democrats in Pennsylvania concentrated?
A They are in Philadelphia. They are in western Pennsylvania. They are also in some of the urban areas.
Q All right. In western Pennsylvania, is it fair to say that the highest concentration of Democrats is in Pittsburgh?
A The largest number? I believe that the outlying counties have more Democrats than the City of Pittsburgh.
Q In terms of the percentage of registered voters that are Democrats, is the highest percentage in the city?
MR. SPIVA: Objection, vague. Percentage of what?
BY MR. KRILL:
Q Democrats, voters.
JUDGE NYGAARD: Go ahead.
A Mr. Krill, I am not sure. I would have to speculate. For instance, I am from Washington County, and I know that we have a very high percentage of Democrats there. So I would have -- I can guess if you want me to guess.
BY MR. KRILL:

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Q If you don't know, just say so, Mr. Ceisler.
A I can only speculate.
Q Can you compare the number -- either the number or the percentage of registered Democrats to registered Republicans in Allegheny County?
A It is a majority Democratic county.
Q Can you give us any figures on that?
A I would have to look at the data for that.
Q You also listed voter performance as one of the things you look at?

A That is an element also, yes.
Q How do you look at voter performance?
A It is a percentage that is calculated from statewide races over a number of years and gives you -- it gives you sort of a look at how Democrats will do in that district.
Q Right now, how many statewide officerholders in Pennsylvania are Democrats?
A Well, the Governor is a Republican. The State Treasurer is a Republican. The Attorney General is a Republican. Our two Senators are Republican. So that would leave the Auditor General.
Q There is only one?
A Bob Casey.
Q And how many Houses of the General Assembly do Democrats control in Pennsylvania?

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A The Republicans control both chambers.
Q So the Republicans control both chambers of the General Assembly, the governorship and all row offices except one; is that right, and both U.S. Senate seats?
A That's correct. And that is why they can draw a map like they did.
Q And the Republicans also have most recently since the year 2000 elections a majority of the Congressional delegation; is that right?
A Eleven to ten Republican, correct.
Q Isn't it fair to say Pennsylvania looks like a pretty Republican state?
A Not necessarily because things change. I think we are going to elect a Democratic Governor.
Q Now you said that you also looked at the candidates. What does that involve?

A Just how the candidates fit the district, what their personal skills are, whether they are good campaigners, how long they have lived in the area, what their ties are, how they come across in person, how they come across on television.
Q Why does that matter?
A I think when people vote, they want to have an visceral connection to the candidate, and they want him or her to be likeable, and they want to be able to relate to them.

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Ceisler - Cross

Q So the quality of the candidate -- let's say is the charisma of the candidate is something that you consider important?
A Charisma, we don't have too many with charisma in Pennsylvania. The personal qualities, Mr. Krill, that come across to people. I mean honesty, integrity, warmth, things like that.
Q What happens if you have a candidate who connects with people because the candidate has those qualities running against a candidate who lacks those qualities?
A Well, that could be an element in that person winning. Again, it is all part of a package. Everything has to go right.
Q Can you assign a percentage to that quality of candidate personalities and say that represents such a percent of the whole election outcome?
A I don't think so.
Q You also talked about money being a factor that you look at?
A Unfortunately so, money is a factor.
Q So you would look at which candidate either has more money or can raise more money; is that right?

A That would be very important because that is how they get their message across.
Q Now that is my list of what I believe you testified to

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Ceisler - Cross

yesterday as the components that you look at for trying to forecast elections.
Did I get everything you said yesterday?
A I believe you did. I trust you.
Q Now in your testimony at your Daubert hearing, do you recall also being asked by your counsel what factors you look at?
A I don't specifically recall.
Q You do recall testifying at your Daubert hearing?
A Yes, sir.
Q Mr. Ceisler, I am going to read a colloquy from page 149 of your Daubert hearing.
MR. SPIVA: I object, Your Honor. This is not proper impeachment. He hasn't made the kind of statement that could be impeached.
JUDGE NYGAARD: Overruled. Go ahead.
MR. KRILL: He has.
BY MR. KRILL:
Q Question by your counsel Mr. Spiva --
MR. SPIVA: Could we have a page?
MR. KRILL: Page 149. I think I said that.
BY MR. KRILL:
Q I would be happy to give the witness a copy to follow.
A Thank you.
Q Line 22 on page 149, do you see that, Mr. Ceisler?

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Ceisler - Cross

A Yes.
Q You are asked by Mr. Spiva: Okay, and what types of methods do you use or information do you look at in trying to accomplish that objective? And was that objective basically trying to forecast elections?
A No. This was the question because it was about when you are a consultant on campaigns.
Q And you are trying to win; aren't you?
A Yes.
Q You said, well, we look at voter registration. Do you see that?
A Yes.
Q And you look at voter performance?
A Yes.
Q And you look at polling data?
A Yes.
Q On page 150 you say quote we look at the amount of money you can raise and where do you put the money, into what types of media. Do you put it into a field campaign and contact campaign. Do you see that?
A I see it.
Q So you were looking at the types of available media also. Is that something we should ad to your list you testified to yesterday?
A Well, I think you are asking me a couple of different

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Ceisler - Cross

questions. I am not sure. I thought you were asking me in terms of not so much running a campaign, but analyzing a campaign.
If I am asked to analyze a campaign for television

or whatever, where you put media is - that is not my decision. You can look at it. But sure, if you want to put it on the list, you can put it on the list.
Q When you are running a campaign, you are trying to win. When you are analyzing a campaign from the outside looking in, you're trying to figure out who is going to win; right?
A Yes.
Q And so you would look at some of the factors; wouldn't you?
A Yes.
Q Now do you see on line six of page 150 of your testimony you said you're looking at what your free media message is. Would you also add that to your list of yesterday's factors?
A I think that comes under issues, Mr. Krill, but you can -- we can have some subheadings here. But put it on the list.
Q Okay. And you said you're -- quote -- you're looking at the type of issues you want to emphasize, where you want to emphasize. You might want to talk about one thing in one

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Ceisler - Cross

part of the district. You might want to talk about another or emphasize another issue in another part of the district.
Is it fair to say that that is a subset of issues?
A Yes.
Q And why would you emphasize one issue in one part of the district and another in another part of the district?
A Because people in one part of the district might care about a certain issue. They might care about a road project or some type of environmental concern where people on the other part of the district don't even know about it, and it

doesn't affect their lives.
Q Is it fair to say that although the specifics on issues might differ, there are some issue themes that a consultant in your role sees emerging over and over again in every campaign?
A I think ever campaign is different, Mr. Krill. But I guess there are some issues that when they are issue difference that emerge. Every campaign is different. Every year is different.
I mean this year because of what happened on September 11th, national security, foreign policy is important. Those issues weren't important before.
Q Now yesterday you testified about some maps. I am showing you Plaintiff Exhibit 2D. Do you recall testifying about that yesterday?

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Ceisler - Cross

A Yes, sir.
Q Did you make that map?
A No, sir.
Q There is an area highlighted in green on Exhibit 2D. What did you think that shows?
A In green, that is going to be the new 18th Congressional District.
Q Under Act 1?
A Under Act 1. That is what the heading says so that is what I imagine it is.
Q Okay. And it looks like it travels from Washington County in the west through Allegheny County into what county is this?
A I think it is Westmoreland.
Q You think it is Westmoreland?
A And probably a little Fayette. I am not sure.

Q Starting in the east, do you know what State Senate District or Districts are within the easternmost portion of the 18th Congressional District?
A I know that Senator Kukovich represents parts of Westmoreland County. I don't know the number of the district.
Q Do you know whether any part of his Senate seat is within the 18th Congressional District?
A I believe he represents most of Westmoreland County. I

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can't say for sure, but I believe it would be.
Q Do you know whether there are any other Senate seats -- State Senate seats in Westmoreland County that are all or partially within the 18th Congressional District?
A I am not sure.
Q You said you thought there was part of Fayette County perhaps in the 18th?
A I am not sure. I would have to look at the books and refresh my recollection. But I am sure you can tell me if there is.
Q I am not under oath though, Mr. Ceisler. Let's look here closer to within Allegheny County. Do you know whose State Senate seat is adjacent to the 37th Senate seat in Allegheny County within the 18th Congressional District?
A I am not sure. I am not sure. The only State Senator I know from there is Barry Stout from Washington County.
Q Because that's where you grew up; right?
A Yes.
Q Do you know whether Senator Stout's District is still within the 18th District under Act 1?
A I believe part of it still is.
Q You believe? Are you really sure about that?

A Senator Stout represents South Spring Township where I grew up. That is one of the split municipalities. Part of it is going to be in the new 18th, and part of it is in the

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Ceisler - Cross

Murtha District. So I believe that Senator Stout does represent part of that.
Q Now yesterday, it was very easy for you to recognize that the 37 State Senate District was within the 18th Congressional District by looking at Act 2 -- by looking at excuse me, not Act 2, Exhibit 2D; wasn't it?
A Yes.
Q Why was it so easy to recognize?
A It is in brown.
Q And isn't there another reason why it was easy to recognize?
JUDGE NYGAARD: I recognize it from here. Where are you headed for? We have looked at that map. It is right there in front of us.
BY MR. KRILL:
Q It is labeled; isn't it?
THE COURT: Certainly, it is.
BY MR. KRILL:
Q The districts that you can't recognize aren't labeled; are they?
A Right.
Q Okay.
JUDGE NYGAARD: I hope we are going to learn something pretty soon, Mr. Krill.
MR. KRILL: I think we are, Your Honor.

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Ceisler - Cross

JUDGE NYGAARD: Good.
MR. KRILL: I think we already have.
BY MR. KRILL:
Q Now I am showing you Plaintiff Exhibit 2C. You now live in Philadelphia; don't you?
A Yes, sir.
Q All right. Whose State Senate seat is at the northern end of the new 6th Congressional District?
A Well, they have done redistricting -- currently or the new districts?
Q Let's talk about currently.
A Currently, the northern part of that district, I am not sure.
Q Again, it is easy for you to recognize the district that is labeled; right?
A Yes, sir, I can read.
Q You didn't make the exhibit that is marked as 2C; did you?
A No, sir.
Q Let me just go back to 2D.
A That might be Senator O'Pake that might be up there. It is easier when I am looking at a map.
Q Okay. Do you recognize on Exhibit 2D what this squiggly blue line is that is just above the eastern portion of the 18th Congressional District?

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Ceisler - Cross

A It is either a border or a river. I am not sure.
Q If I said that it was Kiskiminetas River would that sound right to you?
A No. I wouldn't know.

Q You are not good on rivers in Western Pennsylvania; is that fair to say?
A That is fair to say. I am not a sportsman, Mr. Krill.
Q You are aware, aren't you, Mr. Ceisler, that the rivers in western Pennsylvania have for a long, long time defined the industrial and the political history of western Pennsylvania?
A Yes, sir.
Q Now yesterday you said that you mentioned a Mr. Joe Martz; do you recall that?
A Yes.
Q And do I recall correctly that you said that you expected him to run against Congressman Hoeffel?
A I said there was a possibility of it.
Q Do you know whether that possibility has materialized?
A Well, we will know today.
Q Today is the deadline for filing nominating petitions; isn't it?
A Yes.
Q You talk to people. That is part of your methodology, Mr. Ceisler. Do you know whether Mr. Martz is circulating

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nominating petitions?
A I am told he has circulated, yes.
Q Do you know whether he has decided to file?
A I do not know that.
Q Do you read not only newspapers in newsprint editions but online also?
A Yes, sir.
Q Do you read PhillyNews.com?
A That is The Inquirer Daily News. I get that at home. Sometimes, it is easier to read the newspapers. I will read

it online sometimes.
Q Are you familiar with a reporter named Dave Davies?
A Yes.
Q Do you recall seeing a March fifth article in the Philadelphia Daily News reporting Mr. Borski's announcement that he won't run in the new district?
A I know that Borski announced that. I don't know if I read the article or not.
Q Do you read the Allentown Morning Call?
A That's a very good paper.
Q I take it you read it?
A I try to read it, yes.
Q Do you know Frank Devon of The Morning Call?
A No.
Q Do you know who the Montgomery County Democratic Party

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Chairman is?
A Marcelle Groen.
Q That is G-r o-e-n?
A Yes, sir.
Q Do you recall reading a statement in either the Morning Call or another newspaper by Mr. Groen saying that Mr. Borski's decision not to challenge Mr. Hoeffel was a major blow to the goals of GOP redistricting?
A That is probably something that Mr. Groen might say. Because behind the scenes they are hoping that the northeast Philadelphia Democrat won't run.
Q The Democrats are you say?
A The Democrats who support Mr. Hoeffel are hoping that. Because, remember, this was all set up for Mr. Borski or the northeast Democrat from Philadelphia to win and then lose in the general election. So when Mr. Groen says that, that is

what he is addressing.
MR. KRILL: I move to strike that reference to all set up, Your Honor. I think the witness --
THE COURT: Denied. Let's move on here.

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Ceisler - Cross

BY MR. KRILL:
Q Isn't it true that Mr. Hoeffel and the Montgomery County Democrats believe that Mr. Hoeffel has an excellent chance to win now that Mr. Borski has dropped out?
A If Mr. Hoeffel is the nominee. As I testified yesterday, I believe he has a 50/50 or better than 50/50 chance of winning.
Q That is not what I asked you. I asked you is it true that Mr. Hoeffel and the Democrats in Montgomery County think he has an excellent chance to win?
A If he is ~~a nominee~~, Mr. Krill.
Q Is that what they believe, if he is a nominee, he has an excellent chance to win?
A Yes.
Q Thank you. Yesterday you referred to letters of endorsement for Melissa Brown. Have you seen any of those letters of endorsement?
A Yes, I saw them. I think I saw them online actually.
Q The actual signed letters?
A The copies. Copies of the letters, yes.
Q Where did you see that online?
A I think that was on the Politics PA website.

Q Are you sure you saw actual letters and not just reports about letters?
A I remember seeing I think one. I think I remember

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Ceisler - Cross

seeing specifically a letter from Curt Weldon, but I don't remember all the letters. But I also remember reading a report about it also.
Q Now you haven't done any polling to prepare for the opinions that you have rendered in court in this hearing; have you?
A No, sir; I have not.
Q You haven't examined any polls to prepare for the hearing -- for the opinions you have rendered in this hearing; have you?
A No, sir; I have not.
Q And you haven't brought into court a file of all the newspapers clips that represent that source of information on which you are relying today; have you?
A No, sir; I have not.
Q You don't keep a diary detailing what individuals say to you; do you?
A No, sir; I don't.
Q You don't actually know how much money any particular Congressman has in their campaign committee bank account right now; do you?
A Today, no, I don't.
Q You don't actually know, do you, how much money any potential challenger to an incumbent may have in their campaign bank account?

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Ceisler - Cross

A No, I don't. But at this point, the Senator Murphy and Senator Gerlach, they will have the money they need to run very effective campaigns. Just as we talked about yesterday, the fact that Majority Leader Armey is coming here to campaign for Senator Murphy shows a commitment of the National Republicans to his election.
Q So you are saying that the National Democrats are not committed to any of their Pennsylvania candidates; is that right?
A I didn't say that, Mr. Krill. But National Democrats are not going to put money into elections that are losers.
Q And have you gotten that commitment from the National Democrats?
A I don't talk to them about that. I know how they operate. Just like I don't think if a Republican candidate ran against Congressman Brady that National Republicans would give that candidate any money.
Q So you don't know, do you, Mr. Ceisler, how much money, if any, the National Republican Party has committed to any Democratic candidate in Pennsylvania?
A No. Because right now in some of those races, there aren't even candidates.
Q Is it fair to say that you don't know?
A Right. I do not know.
Q In the process of talking to people, Mr. Ceisler, have

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Ceisler - Cross

you heard that Senator Harris Wofford's son is considering running against Senator Gerlach in the 16th Congressional District?
A Yes, I have.

Q And the Wofford name is very well known; isn't it?
A Yes. Well, not as well known as it was. It didn't get Senator Wofford elected.
Q It did get him elected once; didn't it?
A Yes, on issues. On issues, it did.
Q And by the way, when you went through your methodology, you didn't list name recognition as a factor. But that is in fact an important factor in an election campaign; isn't it?
A Sure. I think I talked about name recognition yesterday in terms of incumbents, incumbents staying in office. Sure, it is.
JUDGE NYGAARD: Are you through?
MR. KRILL: I have one more question.
BY MR. KRILL:
Q It is fair to say, isn't it, Mr. Ceisler, that Act 1 protects a lot of incumbents of both parties in Congressional Districts?
A It protects all Republican incumbents, but not all Democratic incumbents.
Q It does protect -- you listed five that it protects; didn't you?

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Ceisler - The Court

A And two of those I believe have to be protected under law.
Q You are talking about the two minority districts in Philadelphia?
A Yes.
Q So you are talking about Congressman Brady and Congressman Fattah?
A Correct.
Q In the First and Second districts respectively?
A Yes, sir.

MR. KRILL: Thanks. No further questions.
THE COURT: Any redirect?
MR. SPIVA: No redirect, Your Honor.
JUDGE NYGAARD: Questions from the Court?
BY JUDGE YOHN:
Q You talked about the lack of purging in Pennsylvania. What is the law in Pennsylvania on purging at this moment?
A I believe it is after people don't vote after five years.
Q Five years. I know years ago, it used to be two years.
A But I am not -- I am really not sure, but there have been some problems with purging. The counties, they are inconsistent.
Q And you also said there was a problem with registration

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because of the motor voter law. I don't understand that.
A Basically people have to register -- they register to vote when they go to get their driver's license.
Q They can register?
A Yes, and they tend not to vote.
JUDGE YOHN: That is all I have.
JUDGE NYGAARD: Thank you. You may step down.
MR. SMITH: Our final witness is Representative Mascara. He should be here momentarily. He is driving in from Washington County. I wonder if we could have ten minutes or whether we can start Mr. Krill's case.
JUDGE NYGAARD: Let's continue. We will take him out of order. Any objection? Let's move on. We have such a limited time here.
MR. SMITH: The other thing I need to raise is Dr. Lichtman's tables, the exhibit. I moved the admission of

that yesterday. And Mr. Krill asked to cross-examine on it. Then I didn't remove it. I would like to move the admission of Exhibit 12.
MR. KRILL: Objection, Your Honor. Lack of foundation. It is based on flawed unreliable evidence in Exhibit 13. And furthermore, it lacks a valid methodology, lack of relevance.
JUDGE NYGAARD: No. It will be admitted. Your argument goes to weight. We can consider that. It is

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admitted.
(Plaintiffs Exhibit 12 was admitted into evidence.)
MR. SMITH: With the exception of Congressman Mascara, that is the final bit of evidence that we will introduce today.
JUDGE NYGAARD: Very well. Mr. Krill?
MR. KRILL: Your Honor, in light of the schedule that you announced I have given some thought with my colleagues here about how to save some time. We have a number of exhibits that are --
JUDGE NYGAARD: Is this our witness?
MR. KRILL: Yes, it is.
THE COURT: Okay. Tell him he is on.
MR. MASCARA: I am on.
MR. SMITH: We call Congressman Mascara.
MR. MASCARA: There was an accident on the Turnpike.

FRANK MASCARA, called as a witness, being duly sworn, testified as follows:

THE CLERK: Would you state your name, please?
A Frank Mascara.
MR. MACH: Daniel Mach for the plaintiffs, Your

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Mascara - Direct Honor.

Honor.

DIRECT EXAMINATION

BY MR. MACH:

Q Congressman Mascara, what district have you represented under the 1992 Congressional map in Pennsylvania?

A The 20th Congressional District.

Q How long have you represented that district?

A This is my eighth year.

Q Prior to becoming a Congressman, did you have any political experience in that part of the state?

A I was the County Controller in Washington County for six years and a County Commissioner in Washington County for fifteen years.

Q I am showing you what has been marked as Exhibit 1. Can you please describe geographically the 20th District?

A All of Washington County, all of Greene County, about 80 percent of Fayette County, and approximately a 110,000 constituents in Westmoreland County and Allegheny County.

Q Congressman Mascara, can you please describe the people and communities that reside in the 20th District?

A It is my understanding that the Washington, Greene Fayette Counties have been a part of the districts for nearly a hundred years. Most of Washington, Greene, Fayette and parts of Westmoreland Counties are primarily agriculture, a lot of farming, a rural area of my Congressional District.

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Mascara - Direct

There are a lot of elderly. Of course since the demise of steel in the 1980's, we really never recovered from those recessions of the 1980's. But the concerns there are deep rooted in what are we going to do with prescription drugs, what is the future of Medicare.

In fact, I think we rank second per capita to Dade County in Florida with elderly in my Congressional District.

Q Congressman Mascara, have you reviewed the Congressional map recently passed by the General Assembly, what we have been calling Act 1?

A The Conference Committee, yes.

Q What does that map do to your existing district? And I have left up another map that has been marked as Exhibit 2B there. If you can't see it, I can put it up on the easel.

MR. SMITH: Let me just hold it up.

A Yes. This is the infamous William DeWeese sea lion, the new 12th District as it has been called. But it completely emasculates the 20th District.

There is a great deal of concern by the voters of both the 12th and the 18th. The 18th, of course, was designed --

MR. KRILL: Objection, Your Honor. Move to strike.

THE COURT: Just respond to the que tion if you would, Congressman.

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Mascara - Direct

A I am trying to show the difference between the new conference map and Act 1 and what the 20th is all about.

JUDGE NYGAARD: Onto the next question if you would, please.

A I can't do that unless I describe in detail the new 12 district which originally --

JUDGE NYGAARD: Wait a minute. What was your question? Restate your question, and let's zero back in on what you were asking.

BY MR. MACH:

Q Let me ask you: Can you describe geographically what the new district looks like?

A It runs from the West Virginia border on the west and the south approximately 150 miles north to Cambria County and contains different -- parts of that district which was I would have to say split.

And if I might say that the original map that came out of the Senate had Representative Murtha and myself in that district. I was subsequently removed when the Conference Committee and they went down the middle of my street, removed me from the 12th and put me in the 18th, I think that pretty much describes it.

Do you want to talk about splits? Am I permitted?

THE COURT: Just respond to the question. Perhaps

they will get around to it.

BY MR. MACH:

Q You described how the district as drawn under Act 1 includes your house. Can you indicate on the map how where you live is connected to the rest of the district?

A It's Washington County along the Monongahela River. I live in Charleroi, Pennsylvania. And they were successfully came over into Charleroi along the Monongahela River and took out five precincts in order to get to my house.

When they got to my house, I believe it was one

precinct in Allegheny County, two in -- one in Carroll Township, one in Fellowfield Township and several in Charleroi in order to come over the hill to get to my home.

When I leave my home, I am in the 18th. When I walk across the street to get into my car, I am in the 12th Congressional District.

Q You described it earlier --

JUDGE YOHN: Can you point to exactly where your home is?

A I am looking for Charleroi on here. Right here, Your Honor. What they did was come across the river. They had to go across the river from Allegheny River to get to Washington County. By the way the crow flies, it is probably only five miles. If you take an automobile, it would probably be more than five miles.

BY MR. MACH:

Q You referred to an earlier version of a map that included you and Congressman Murtha in the same district. Can you describe that briefly?

A What happened there -- can I see that map? I think it is an Alternative -- the one that goes up into Beaver County and puts Representative Murtha in Fayette County. It gives me all of Washington except Peters Township which is a predominantly Republican District. They took that out of Washington County in order to accommodate a seat that they were attempting to create.

MR. KRILL: Objection, Your Honor. Hearsay. It is imputing intent.

A Your Honor, that is a matter of record.

JUDGE NYGAARD: Overruled.

(Map depicting SB 1200, PN 1612 & Data Summary was

introduced as Defendants Exhibit 8.)
BY MR. MACH:
Q For the record, this is Defendant Exhibit 8. Can you just confirm whether or not this is in fact the map you were talking about?
A Yes.
MR. MACH: I believe the Court has copies of this.
JUDGE NYGAARD: What exhibit?

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Mascara - Direct

MR. MACH: Defendant Exhibit 8.
A This was passed by the Senate.
MR. MACH: I don't believe we have a blow-up of that. It is in the white binder I think.
MR. KRILL: White binder, Volume 1, Your Honor.
BY MR. MACH:
Q Just so the Court understands what you are talking about and based on this map, can you identify if there are any dots or anything?
A This is the original Senate map that was passed before the Christmas break which has three separate districts there -- no, it has me in the 12th District with Representative Murtha. This is before this map.
And Representative Murtha didn't find that satisfactory. He asked that the Senate map be changed to reflect that I would no longer be in the 12th and pitted against him in the 12th Congressional District and placed me across the street in the 18th District.
Q Under Act 1, you do not live in the same district as Congressman Murtha; is that right?
A That's correct.
Q Now you referred to splits earlier. Are there any

municipal splits along the line between the 12th and 18th District?
A Yes, there is. I think there's a total of 69 splits.

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Mascara - Direct

And -- 62. 49 of those splits occurred in the 18th and 12th Districts affecting a total of 282,000 people in order to draw the map that they drew.
Q Do you have an understanding of the political leanings of the areas on either side of the line between Act 1's 12th District and 18th District?
A I certainly do.
Q Can you describe that for the Court briefly?
A The 18th District -- as well as the district out of the east that I can't speak to because I am not as familiar with the east as I am with the west -- the maps were drawn in such a fashion, and it is common knowledge, that those responsible for drawing the map, more specifically a super computer at Carnegie-Mellon, created two Congressional seats for two incumbent Senators in the Pennsylvania Senate, Senator Tim Murphy and Senator Gerlach from eastern Pennsylvania.
Q And can you describe the politics of each of the two Districts, 12th and 18th as they are now under Act 1?
A What happened in the 18th, because I represent a part of Allegheny County now, which historically in the four elections that I ran in that there is a preponderance of Democrats who have a tendency to vote Republican.
And apparently, the computer was able to identify that. Don't ask me now. This is the first time in history I understand that a super computer was used to draw the

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Mascara - Direct

reapportionment map. And what they did was include more of Allegheny County in the 18th District.

I currently represent about 20 percent of Allegheny County in my current district. Now with the new map, there is 55 percent in Allegheny County. And given that, plus the ability of the computer to identify D's that vote R, this seat is a given. I understand there is not anybody even running -- Democrat, that is, -- for that seat.

So they did their homework and was able to crunch the numbers. And so they have a compactness of Democrats in one area and compact of Republicans in another area.

MR. KRILL: Your Honor, I object and move to strike the Congressman's testimony about the super computer. No foundation was laid for his knowledge of such a thing.

JUDGE NYGAJIRD: Overruled.

BY MR. MACH:

Q You testified that this seat is a given for one particular party?

A Yes.

Q Which party?

A The Republican Party.

Q Do you recognize this as that district?

A Yes.

Q Do you know what this brown area I am referring to is on Exhibit 2D?

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Mascara Direct

A Is that in the Allegheny County? Is that Melissa Hart's? If I could see the other map.

JUDGE NYGAARD: Why doesn't somebody give him a hand with the maps? Mr. Spiva?

MR. MACH: This is a blow-up of this area. And for the record, this is a map that is labeled Murphy 37th Senate District in the 18 Congressional?

A Okay. I recognize this, and I can point it out on there. You were asking about the --

BY MR. MACH:

Q Can you describe how this seat is a given? You said it is a given for the Republicans?

A I would rather do it on here.

Q Sure.

A Basically what they did is they took the worst of my existing district which has tendencies to vote -- maybe I can use this marker here. They took the parts of Washington County that have a tendency to vote Republican and where the Democrats have a proclivity to vote Republican and came into Westmoreland County and did the same thing.

So there's pieces of areas that people tend to vote Republican. And they successfully were able to identify that. Which made it a strong part of Allegheny County, Upper St. Claire and Bethel Park.

MR. KRILL: Objection, Your Honor. I move to

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Mascara - Direct

strike again. The witness again is imputing without a foundation. It is hearsay. He was asked to describe his district, not to describe what people -- what he thinks people intended to do.

JUDGE NYGAARD: I am not going to strike. Let's get back to the question and answer. It is a little different from Congress the way we work here.

A I understand that, Your Honor.

JUDGE NYGAARD: We ask a little restraint on your part?

A You will have to bear with me. I am not a witness everyday in Federal Court. Thank God.
BY MR. MACH:
Q If Act 1 remains the law and remains the map in Pennsylvania, are you going to run in the district in which you reside?
A No.
Q Can you explain why?
A Because the map that was drawn takes the worst of what I had and gives it to Tim Murphy, and takes the best of what I have in my current district and puts it is in the 12th. Fifty-two percent of the Democrats in the new 12th District, they vote for me. I had to make that decision.
I looked at the numbers both in the 18th and the 12th, and it was better for me to run in the 12th.

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MR. MACH: I have nothing further.
JUDGE NYGAARD: Very well. You may examine.
MR. KRILL: Thank you.

CROSS EXAMINATION

BY MR. KRILL:
Q Congressman, would you turn again to Defendant Exhibit 8? Do you still have that in front of you?
JUDGE NYGAARD: Give him a hand there, counselor. It is in the book.
MR. KRILL: For the Court's information, Defendants Exhibit 8 has two pages. The first page is a table. The second page is a map. I am asking the Congressman to look at the second page, the map.
BY MR. KRILL:
Q If you look at Defendant Exhibit 8, do you see a number of black dots on the map?

A Yes.
Q Those represent the residences of incumbent Congressmen; don't they?
A I don't know. If you say so.
Q Let's look --
JUDGE NYGAARD: When you are asked a question and you don't know the answer, that is an acceptable answer I don't know.
A I don't know.

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JUDGE NYGAARD: Okay.
BY MR. KRILL:
Q Let's look a little more closely at the 12th Congressional District. If you proceed from the foot of Allegheny County and follow the Monongahela River line which you can see on the map -- don't you?
A I see the Monongahela River.
Q Shortly -- just a little bit below the first squiggle of the Monongahela, you see a black dot. It is superimposed almost on the river. Do you see that?
A Yes.
Q Is that approximately where you live?
A Yes. If that is Charleroi, Pennsylvania, that's where I live.
Q And in the 12th Congressional District to the east, do you see a county that is mostly gray representing the 12th District?
A Yes.
Q And do you see a black dot in the southwest corner of that county?
A I think it is a black dot. I am not sure.
Q If that black dot thing that you are looking at is a

23 black dot, is that in a location that approximates the
24 residence of Congressman Murtha?
25 A Congressman Murtha is from Cambria County which is to

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Mascara - Cross

1 the northeast. I see a black dot up there. That looks like
2 Johnstown. It looks like a metropolitan area.
3 Q You do see a black dot there?
4 A Yes.
5 JUDGE RAMBO: Why don't you point to it?
6 JUDGE YOHN: He is talking about the one to the
7 lower left of the number twelve.
8 BY MR. KRILL:
9 Q That dot would approximate Congressman Murtha's
10 residence?
11 A I don't know where John lives really. I think he lives
12 in Johnstown. That looks like a metropolitan area.
13 Q Of Johnstown?
14 A Yes.
15 Q Thank you. Congressman Mascara, you conveyed your
16 views on Congressional redistricting to the General Assembly
17 of the Commonwealth; didn't you?
18 A In writing. The dog and pony show, I didn't attend
19 that.
20 (Letter from Congressman Mascara to Senator
21 Lemmond and Representative Clymer was introduced as
22 Defendants Exhibit 77.)
23 BY MR. KRILL:
24 Q I am handing you a document that has been marked as
25 Defendant Exhibit 77.

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1 MR. KRILL: Binder four, Your Honor.
2 JUDGE NYGAARD: Where are we?
3 MR. KRILL: Binder four, Exhibit 77.
4 JUDGE NYGAARD: Binder four, exhibit?
5 MR. KRILL: 77, Your Honor.
6 JUDGE NYGAARD: 77, very well.
7 BY MR. KRILL:
8 Q Can you identify Exhibit 77?
9 A Yes.
10 Q What is it?
11 A It is a letter sent to Senator Lemmond and
12 Representative Clymer as a result of hearings that they held
13 throughout the state I understand.
14 Q Did you send this letter?
15 A Yes.
16 Q This letter conveys your views on Congressional
17 redistricting?
18 A For the most part it does, yes.
19 Q Did you have an opportunity to actually testify before
20 their -
21 A I did not.
22 Q -- panel? Was that because you were unavailable?
23 A I think it was.
24 Q A scheduling conflict?
25 A Yes.

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Mascara - Cross

1 Q Were you invited to come testify?
2 A I don't believe so. I don't believe I was personally
3 asked to testify.
4 Q At least one of your colleagues did testify though to

your knowledge?
A No.
Q No?
A Commissioners from I believe Washington and Greene County, the Chairman of the Board of Greene County and Washington County appeared before that Commission or whatever you call it.
Q In the process of Congressional redistricting as the General Assembly started to consider it, did you attempt to make a telephone call to any state legislators?
A I believe after the Senate passed the bill and the House passed the bill, I made several calls to some members -- Democratic members of the House that that was something that I could possibly support. Maybe four or five members. I don't recall how many. Certainly Bill DeWeese, our Minority Leader in the Pennsylvania House.
Q Did you talk to some of the Democratic members of the Assembly who are from your area?
A Yes.
Q Who were they?
A Leo Trich I believe, Vic Lescovitz, Pete Daley, of

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Mascara - Cross

course, Bill DeWeese. A few of members that I called that were from Washington County for the most part with the exception of Bill DeWeese, who represents part of Washington County.
Q Did you talk to Congressman Murtha about redistricting?
A Congressman Murtha really, before he got what he wanted, led the fight for a map that would protect as many incumbent Democrat members. He and Mike Doyle and Bob Brady from Philadelphia really led the charge in trying to create a map that would be acceptable to the General Assembly.

However, when it was apparent that they, along with Congressman Kanjorski I guess out of self-preservation, I don't know, they immediately dropped the ball and handed it off to Congressman Borski who then was responsible for pursuing a map that we thought would be acceptable to the General Assembly.
Q So you are saying that Congressman Murtha got what he wanted in the 12th District under Act 1; correct?
A Yes. But Senator Bob Mellow said it first. And Representative Perzel said it also. So I am repeating what I have heard and what I have read in the newspapers.
And they were quite surprised that he settled for so little. That was to get rid of me.
Q Are you saying that Congressman Murtha wanted to get rid of you?

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Mascara - Cross

A Yes. He would approve the Conference Map Act 1 if I was removed from the 12th Congressional District and put in the 18th.
Q As a matter of law in Pennsylvania, any Congress -- any candidate is free to run for any seat no matter where they reside; correct?
A That's correct. I don't know whether he knew that or not, but he knows it now.
Q And are you filing your nomination petition today for the 12th Congressional District?
A I have filed.
Q That is for the 12th?
A Yes.
Q So as of today, the 18th Congressional District under Act 1 is technically an open seat?
A I understand that. I am not sure. I guess today is

the last day to file. So some people could file. I just would like the Court to know, and I would like you to know, sir, that this is not about Frank Mascara. I am not here because of myself.

I am here because the people of my district and the people of Pennsylvania have been wronged. I call it political carnage is what I call it.

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Mascara - Cross

We talked earlier in other courtroom settings about the impact on Pennsylvania by the loss of Bob Borski, by the loss of Tim Holden, by the loss of Bill Coyne, by the loss of Frank Mascara. And ultimately, most of those will not be around after this primary election.

Q Let me just raise one point there. With respect to Congressman Coyne, you are aware, aren't you, that he announced his intention to retire from Congress last year?

A Because he knew he was being pitted against Mike Doyle. Mike Doyle made it known that he was going to run regardless of who he was pitted against. Representative Coyne, a good member of Congress, decided he just was not apparently up to a huge fight in the City of Pittsburgh, which is predominantly Democrats.

So that is the reason I think -- Bill Coyne told me that. I asked him why you decided not to run.

Q Is it true that Congressman Coyne made his decision to retire before any of these maps were created?

A I am not certain about that. I knew he knew, and we all knew, he was in for a fight with Mike Doyle. We share information on the House floor.

I think Bill Coyne had he not been pitted against

Mike Doyle might stay a term or two. I don't know. You would have to ask him that.

Q Is it true that he made his decision last summer?

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Mascara - Cross

A I don't believe so. I don't think it was that long ago.

Q You are aware, aren't you, Congressman Mascara, that 42 Democrats in the State House of Representatives voted for Act 1?

A I sure do. And they voted that way to help Mr. Perzel to pass this bill. And they were called by Congressman Murtha, Congressman Doyle, Congress Brady and Congressman Kanjorski, all of whom liked what they saw on the map.

I knew Perzel could not pass that map without those 42 votes.

Q So in other words, Perzel had to broker a compromise with the House Democrats; is that right?

A Yes.

Q Or otherwise, we wouldn't have a redistricting map at all?

A The Courts then -- if we couldn't reach - I guess that is the way it works. If you don't have a map and time has expired, it goes to the Courts, and the Courts draw a map. They wanted to avoid that.

Q I think the Courts probably wanted to avoid that, too. Congressman, do you believe you can win in the 12th Congressional District?

A Do I have to answer that, Your Honor?

JUDGE NYGAARD: I am curious, too.

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Mascara - Cross

A The polls look good. Again, polls are polls. But they look good. Again, because I said earlier that 52 percent of my current district is in the new 12th. Again, I am not here for Frank Mascara.

BY MR. KRILL:

Q You are not sure here for Mr. Jack Murtha.

A No. I am here because Pennsylvania and my district stands to lose under this reapportionment map, and that is why I am here.

I think I said in an earlier court setting if we could undo that somehow, I would be glad to walk away. I don't need the job. I am here because I like it and I enjoy it. I am hell bent on proceeding to make sure that people in this state are not wronged, and they have proper representation.

The point I would like to make, if I may, talking about representation is that Allegheny County has 10,000 less than two members of Congress. There is 646,000 times -- they have ten thousand less. They are not entitled to any more than two.

If a third is elected -- and I am sure that he is going to be elected -- then you are going to have three urban, suburban members of Congress, and you are going to leave those rural counties under represented as far as I am concerned.

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Mascara - Cross

I think that is an injustice. I don't think it is fair.

JUDGE NYGAARD: All right. Let's get to the next question.

BY MR. KRILL:

Q Let me get into splits. You were asked about splits?

A Yes.

Q Let's start at the bottom. Sort of the lowest level of split you can have is a precinct split; right?

A They have split precincts, yes.

Q You served as County Commissioner?

A Yes.

Q Is there anything wrong with splitting?

A Absolutely, as the Chairman of the Board of Westmoreland Commissioners, I oversaw the Elections office. I believe the Director of Elections testified before the Commonwealth Court.

And let me tell you this: It is a mess. People don't know where to vote. They don't know what precinct to vote in. People across the street are asking me where they go to vote. They used to go to the second, and now they have got to go to the fourth. They have never been to the fourth.

This creates havoc as far as I am concerned. And I am speaking as a former Commissioner that knows about the

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Mascara - Cross

problems associated. People are going to be disenfranchised with this map as far as I am concerned.

Q Because of precinct splits?

A Precinct splits? Street splits. They come down the middle of my street and put this in the 2nd Precinct and put this in the 4th Precinct. The lady across the street votes at a different poll.

I don't think that is fair. I think people are going to be hurt. I think after this election if this doesn't change, we are going to find out that people can't

vote. Many of them can't vote because they don't know where to vote. They don't know who their Congressman is. They don't know Jack Murtha. He is from Johnstown.
Q We are starting at the bottom at the precinct.
A They split communities and split precincts.
Q But are you saying that a precinct split causes ballot confusion or voter confusion?
A If you are elderly -- and I just explained earlier the number of elderly people in my Congressional district -- the lady across the street is 80 years old. She is confused. That whole area is all elderly people.
I am saying it is a disadvantage to these elderly people who should not have their precincts changed all of a sudden. It just happened overnight. I think it is unfair. I really do.

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Mascara - Cross

Q If you go into a precinct that has been split, there would be two polling booths there, right, depending on which part of the precinct you live in?
A It depends on what kind of voting system you have. We have the Florida voting system in Washington County. The punch card system was put in. These people would have to go in and would have to be -- first of all, they couldn't vote at the 2nd. They would have to go to the 4th if you live across the street where I live. It's made a mess of the whole thing.
Q Are you saying that if people go into a precinct where -- their voting place where there is a punch card system, they might end up getting the wrong punch card?
A No. They might not even go. Because if -- they have been going to the 2nd precinct from Charleroi for 20, 30, 40, years. All of a sudden you tell that old person you can't go

there, you have to go to Precinct 4 which is in the bottom of a church, and they say I am not going there.
Q Is it your position that the Commonwealth ought to try to minimize precinct -- the number of precincts that are split?
A It is obvious. I stated earlier about the 18th and the 12th. Out of 62 splits in this area, 47 of them was in the 18th -- 49 in the 18th and the 12th.
Q We are talking about precinct splits. You want to

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Mascara - Cross

minimize precinct splits?
A I think there should be a minimum of precinct splits, of community splits. They took two precincts out of Charleroi to get to me. Now you have three precincts that belong to another Congressman. These people are confused.
MR. KRILL: Thank you very much. I have no further questions, Your Honor.
JUDGE NYGAARD: Any redirect?
MR. MACH: No redirect.
JUDGE NYGAARD: From the Court? Thank you, Congressman. You are free to go.
MR. SMITH: The Plaintiffs rest, Your Honor.
JUDGE NYGAARD: Very well. We were thinking about having a break at ten o'clock. This would be a more appropriate to take a short break. Ten minutes. Let's be back in our seats ready to begin at ten minutes of ten.
MR. KRILL: Your Honor, if I could have five minutes longer, what I would like to do is prepare a list of what I consider the self-authenticating or judicial notice type of exhibits and just ask the Court to admit them at the outset of our case. I think that would save a lot of time.
THE COURT: It might. Let's resume then. Over

the lunch hour perhaps you can get that put together.
Sometime during the course of your presentation, we can do
that.

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, et al.,
Plaintiffs

v. NO: 1:CV-01-2439

THE COMMONWEALTH OF
PENNSYLVANIA,
Defendants

TRANSCRIPT OF PROCEEDINGS
REAPPORTIONMENT NONJURY TRIAL

VOLUME 4
(Pages 1 through 99)

BEFORE: HON. RICHARD L. NYGAARD, Judge
HON. WILLIAM H. YOHN, JR., Judge
HON. SYLVIA H. RAMBO, Judge
DATE: March 12, 2002, afternoon session
PLACE: Courtroom Number Three
Federal Building
Harrisburg, Pennsylvania

COUNSEL PRESENT:
PAUL M. SMITH, Esquire
BRUCE V. SPIVA, Esquire
DANIEL MACH, Esquire
ROBERT B. HOFFMAN, Esquire
For - Plaintiffs
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For - Defendants Jubelirer & Ryan

J. BART DELONE, Esquire
For - Defendants Commonwealth of PA, Governor, Secretary and Commissioner Filling

Monica L. Zamiska, RMR
Official Court Reporter

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MR. KRILL: Your Honors, the original of the Exhibit 89 appears to have walked off the table here, so I've retrieved another copy. I intend to use it with my next witness. I call Dr. Thomas Brunell.

THOMAS BRUNELL, called as a witness, being duly sworn or affirmed, testified as follows:

THE CLERK: And would you state your name please.

THE WITNESS: Thomas Brunell.

THE CLERK: And would you spell your last name.

THE WITNESS: B-r-u-n-e-l-l.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. KRILL:

Q How are you employed, Dr. Brunell?

A I'm an assistant professor in the Department of Political Science at the State University of New York at Binghamton.

Q How long have you held that position?

A About three years.

Q What's your educational background?

A I have a bachelor's degree, a master's degree and a Ph.D. all in political science-all from the University of California at Irvine.

MR. KRILL: Your Honor, I'm going to hand the witness Exhibit 48 from binder 3 which is his curriculum

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vitae.

BY MR. KRILL:

Is Exhibit 48 your curriculum vitae, Dr. Brunell?

A Yes, it is.

Q Would it be fair to say that your field of specialty is quantitative political science?

A Yes, that's a general description of what I do.

Q How would you describe it?

A I utilize quantitative statistical methods to study political science, and the substantive areas, if I may go into it, are Congress, congressional elections, electorial systems.

Q Are you a member of any professional associations in your field?

A Yes, I am a member of the American Political Science

Association, the Midwestern Political Science Association, Southern Political Science Association and I think I'm a member of the Western Political Science Association.
Q Have you received any grants or awards in your field?
A Yes, I have.
Q What are they?
A This past semester, fall semester, I was awarded the dean's research semester award which relieved me of my teaching duties to allow me to concentrate on my research for the 1998-'99 academic year. I was awarded the American

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Political Science Association Congressional Fellowship which allowed me to spend a year on Capitol Hill. I also received other smaller grants to travel to meetings and to finish my dissertation. I also -- the Order of Merit Award was for outstanding graduate scholarship while I was a graduate student.
Q Have you published in the field of quantitative political science?
A Yes, I have.
Q And can you identify some of your topics on which you published?
A Some of the topics I published fairly extensively on partisan bias and electorial systems. That would be the most relevant thing or what we're going to talk about here today, but I also published work on a variety of issues, including partisan realignments, interest group scores and how those relate to member ideology. I published extensively on census and some other topics such as the European corps of justice is another interest that I published on.
Q Have you testified as an expert witness in redistricting cases?

A I have.
MR. KRILL: Your Honors, I offer Dr. Brunell as an expert in quantitative political science.
MR. SMITH: No objection.

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MR. KRILL: I move the admission of Exhibit 48, Dr. Burnell's curriculum vitae. I move for 48.
MR. SMITH: No objection.
JUDGE NYGAARD: Admitted, and your motion is granted for treatment for him as an expert.
BY MR. KRILL:
Q Dr. Brunell, what were you asked to take a look at in connection with this case today?
A It was my understanding that I was going - I was going to serve as a --basically as a rebuttal witness to the testimony and reports from the other side.
Q And have you identified --have you examined the data that were -- or data compilations that were provided to defendants by Dr. Lichtman and by his counsel?
A Yes, I have.
Q Have you listened to his testimony yesterday in this court?
A I did.
Q Have you listened to his testimony in the Daubert hearing last week?
A Yes, I was present for that.
Q And you testified at that hearing also, did you not?
A Yes, I did.
Q And did you listen to his deposition testimony earlier?
A Yes, telephonically.

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Q Now I call your attention to Plaintiff's Exhibit 12, which is in the plaintiff's binder of exhibits. Now you heard Dr. Lichtman testify as to his conclusions yesterday, didn't you?
A I did.
Q With respect to his conclusions as they are reflected in the Plaintiff's Exhibit 12, Table 1, do you agree with his conclusions?
A No, not at all.
Q Why not?
A Can I use the easel? Would that be -- could I step down and --
Q Sure.
A (Witness writing on easel.) Basically what Professor Lichtman has testified to was that the following relationship exists between seats and votes, which is what we are interested in. So the first thing is what's the vote breakdown in Pennsylvania? On his Table 1 you can see that he is at the very last line he said the sum is 50.3 percent. So he testified that the vote is roughly 50/50 between Democrats and Republicans in the State of Pennsylvania. Okay. So it's a virtual dead heat. There is virtually the same number of Democrats as there are Republicans in the state. So that's the vote.
In term: of seats, under Act 1, his model is

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predicting that there will be 14 Republican seats and 5 Democratic seats, a big advantage for the Republicans. So this is 74 percent. The Republicans get 74 percent of the seats with 50 percent of the votes. Now if that were true,

he testified that there would be 24 percent partisan bias in favor of the Republican party, which is a significant amount of bias if that were indeed the case. However, this number here (Indicating.) depends entirely on both --
Q Excuse me, the witness was pointing to the 24 percent.
A Yes.
Q Dr. Brunell, I have to state that so that the record is clear.
A Okay, that's fine. I'll try to endeavor to, when I point, to say that I'm pointing to. The 24 percent depends entirely on both of these numbers. If either the 50 percent of the votes or the 74 percent of the seats under Act 1 is wrong, then this number is wrong. Okay. So let me take them -- I believe that they are both wrong. Let me take them in turn.
Do we really believe -- he has some data here to suggest that Democrats and Republicans are equally -- have the equal strength in terms of voting in the State of Pennsylvania. I didn't -- I haven't gathered up any data to bring to you a different number, but let's just take a common sense approach. Which party controls the overwhelming

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majority of the statewide elective offices, which party controls a majority in the state house, which party controls a majority in :he state senate, which party won all seven of the judicial - statewide judicial races in 2001? Right. We all know the answer to all of these questions is the Republican party. So I think to have us believe that Pennsylvania is a dead heat, I think is misguided. I don't think there is any way we can really believe that, and I think it depends on data that he's chosen here that he's drawn that number. So this number I think is wrong.

Q The witness is drawing an "X" through the vote 50 number on the easel.
A Okay. Now let's look at seats. Dr. Lichtman claims that under Act 1 the Republicans will win -- his estimate is that the Republicans will win 14 of the 19 new seats. Now we know he even testified that this wasn't completely accurate. Right. We know we can check for accuracy on the left-hand side of Table 1 to see how well he post-dicted the past decade of congressional elections.
Q Excuse me Dr. Brunell, you used the work post-dicted. What is that?
A How well s he predicting the past, okay. So he predicts that :he Republicans should win 12 of the 21 seats in Congress in the past 10 years. Now we know that's completely wrong. In four of those five elections the

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Republicans only got 10 of the 21 seats, and it wasn't even until the very last election in 2000 that they won 11. So in every year it mispredicts it, and it's always mispredicting it to -- in favor of the Republicans. It's always saying the Republicans are going to get more seats than they actually do. So my point is if his model doesn't predict the past, I have no confidence whatsoever that's it's going to predict the future. This number is wrong.
Q The witness has just crossed out the 74 percent on the easel.
A Now remember if either one of these were wrong, this is wrong. (Indicating.) Since both of them are wrong, I have no confidence :hat that represents the actual reality under Act 1 at all. I don't think that there is any evidence that that's the case.
Um, how can I -- let's resurrect this 24 percent

partisan bias ust briefly to do another check on it. So if this were the case again, the Republicans, when the vote is 50/50, the Democrats should win -- the Democrats should win 5 seats to the Republicans 14. So the Republicans have a 3 to 1 advantage in seats, 75 percent to 25 percent. Overwhelming advantage with just 50 percent of the votes.
We have some data that can speak to whether or not this really happens at all, and again he's -- the claim is that this 24 percent is partisan bias in the electorial system.

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So it should m manifest itself in every single election. You can't just point to one election and say, "Look, this was a disadvantage for the Democrats in this election." This tremendous amount of bias has to manifest itself in every single election that occurs if this is indeed the case.
Okay. So if we look at Defendant's Exhibit 89, we can get an idea if this number comports at all with reality.
Defendant's 89, let's look at the first race, the presidential race, Gore beats Bush by 52 percent to 48 percent. Let me quickly count, because I have forgotten how many districts score, let me count them quickly.
Q I think t's on the record, Dr. Brunell, that Gore won 10.
A Gore won 10, okay. So here's a race that's close to 50/50, Your Honors, 52 percent for the Democrats, 48 percent for Republicans. And if Dr. Lichtman is correct, if his model is correct, then we should expect somewhere around a 3 to 1 advantage for the Republican party if this is true. Does that fit reality at all? No, in fact the Democrats get a majority of hose districts. Okay. So not only is it not a 3 to 1 advantage for the Republicans, but, as it should, Act 1 translates a majority of the votes statewide for Gore

into a majority of these hypothetical congressional districts
statewide. So that I think we can again, I won't bother to
get up and cross it off, but I will cross off the 24 percent

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again. I just I don't see any evidence that there is that
kind of partisan bias in Act 1.
Q So is it your opinion, Dr. Brunell, that if the
analysis doesn't accurately post-dict results, then the same
analysis using the same data can't accurately predict it?
MR. SMITH: Objection, Your Honor.
JUDGE NYGAARD: No, let him answer. Overruled.
A Yes, I think I said actually that without even a
question, it may not have been leading, I think I actually
said that.
BY MR. KRILL:
Q Yes, you did. Dr. Brunell, have you looked at Dr.
Lichtman's data compilations in his Exhibit 13 or as they are
reflected in Defendant's Exhibit 89 to see whether Act 1
reflects a majoritarian principle?
A Yes, I have.
Q Can you explain what your analysis was?
A . Certainly This is another approach that I have used
in the past an other experts have used in the past to
utilize statewide data and break it down into these
hypothetical congressional districts to see what the
relationship is between different districting plans. If
indeed Act 1 was severely biased, it would manifest itself in
these hypothetical elections because again partisan bias is
systematic. It is always there. It can't appear and

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reappear. It might differ slightly from election to
election, but Le's claiming that it's biased by a very large
amount, and we should be able to detect that very easily. I
mean, this, again, 50 percent of the vote should translate
into a 3 to 1 advantage in the seats, that should be pretty
easy to detect and in my going through these elections,
let's take a simple test. Does every -- does Act 1 treat
both of the pa:-ties fairly in terms of the majoritarian
principle, which is when you get a majority of the votes
statewide, you should also get a majority of the seats? If
it doesn't, then perhaps it's biased. And Act 1 -- and if we
were to believe Professor Lichtman's testimony that there was
tremendous -- his very significant amount of bias, we should
-- it should "probably violate the majoritarian -- it should
violate the majoritarian principle. Right. I mean he's
saying 50/50, you get 75 to 25.
So as you go through these, and we won't go through
them all because, again, this is something Your Honors can do
later on, but every single one of them complies with the
majoritarian principle, and I submit there is nothing there
that would indicate at all that we'd have the significant 24
percent, a nine seat differential between the parties at
50/50. There s nothing here that would lead you to believe
that. When th Democrats do really well statewide, they do
really well in all the districts.

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We had one of those examples yesterday, but I think
it's really worth going over again, that's the 1992
treasurer's election. The Republican candidate Mr. Knoll
crushes -- the Democrat Mr. Knoll crushes the Republican Mr.

Henry.
Q It's Mrs Knoll.
A I'm sorry. I was just thinking I probably shouldn't go with Mr. And that huge advantage statewide translates into a victory at 18 of the 19 congressional districts as well, which is exactly what you'd expect in a fair electorial system. So when the Democrats do well statewide, they do well in the Congressional districts. There is not 24 percent partisan bias.
Q Dr. Brunell, is it possible to graph that majoritarian principle?
A Yes.
Q Can you do that on the easel?
A Sure.
Q Why don' we flip to another page. Make it as large as you can so that we can all see it please.
A (Witness writing on easel.) I'm a terrible artist, I'll admit that upfront. So this is a graph between votes and seats, and let's say that -- so this is --
Q Just for the record, Dr. Brunell, on the drawing you're making on the easel, the X axis of your graph is what?

A Votes.
Q And the Y axis?
A Is seats. So let's actually make it be more specific. Let's say, let s do this in terms of one party, let's just do Republican sea percentage and Republican vote percentage. Okay. So here it's 0, 0 percent of the vote. Let's call this 50, and let's say out here is 100 on for votes on the X axis. Let's do the same thing for the Y axis, 50 percent and 100 percent. Okay.
So in a single member district winner take all system

like we have America, we'd expect hypothetically to see votes curve to look something like this S-shaped curve, not perfectly straight, not perfectly linear. There is a curving linear relationship between the percentage of the votes and the percentage of the seats.
Q Why is there a curving linear relationship?
A Because we don't have a system of proportional organization. If let's say a party has 50.01 percent of the votes in the state, and let's say there is 19 congressional districts, if their votes were spread efficiently across every constituency, they can pick up every single seat. All you need is -- all you need to do is get a plurality in every single district, and so in order to win a hundred percent of the seats, you need far less than a hundred percent of the votes, and this manifests itself in the electorial college in

1984 when Ronald Reagan beat Walter Mondale. He got about 60 percent of the vote, and I think he won every single state except Minnesota. So he got 95 percent of the electorial college votes. That's the same kind of relationship. Okay.
So you will notice that this line only appears in the upper-right hand quadrant and the lower left-hand quadrant. So if the Republicans were to win 75 percent of the seats with -- let me not -- I won't do numbers. Let's say the Republicans win 45 percent of the vote, which is approximately right here, yet they get 55 percent of the seats --
Q Dr. Brunell, just for illustration purposes, perhaps you can switch to different colors so you don't confuse lines here, and I have one more color for you if you need it.
A Sure. So in this example the Republicans get about 45 percent of the vote and 55 percent of the seats. So the dot

17 would be about right here. (Indicating.) Okay. That would
18 be a violation of the majoritarian principle. The
19 Republicans are able to convert less than the majority of the
20 votes into more than a majority of the seats, and down here,
21 since these are mirrored images of one another, this would
22 just be any dol in this range would be --
23 Q You're referring, Dr. Brunell, to the lower right-hand
24 quadrant of your graph when you say this range?
25 A Yes. Yes, I'm sorry. If there were any dots in this

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1 quadrant, would represent when Republicans got more than 50
2 percent of the vote and less than 50 percent of the seats,
3 which the mere opposite of that means that if the Democrats
4 were able to translate less than the majority of the votes
5 into more than the majority of the seats. So any elections
6 appearing in these two upper left and the lower right-hand
7 quadrant would violate this principle.
8 Q The majoritarian principle?
9 A That's correct.
10 Q Okay. Now when you looked at the way Dr. Lichtman's
11 reaggregation of congressional races turned out under Act 1
12 as shown in Defendant's Exhibit 89, what did you find out
13 with respect t, how they fit on your graph?
14 A All of these races were in either the upper right-hand
15 quadrant or the lower left-hand quadrant, indicating again
16 that Act 1 translates the majority of votes into a majority
17 of seats for both parties, that's the great thing. It
18 doesn't just do it for the Republicans, it doesn't just do it
19 for the Democrats, it does it for both.
20 Q And have you used this kind of majoritarian analysis
21 before?
22 A I have.

23 MR. KRILL: With the Court's permission, I'd like
24 to mark the gr ph as an additional defendant's exhibit.
25 JUDGE NYGAARD: Sure.

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1 MR. KRILL: 101. I'd be happy to mark the preceding
2 sheet, but I don't think that was really necessary. Perhaps
3 I should. Let me -- that would be 101 and 102.
4 For the record, Your Honors, I have marked the
5 first sheet on the easel that Dr. Brunell marked up as
6 Defendant's Exhibit 101 and the second sheet with the
7 majoritarian graph as Defendant's Exhibit 102.
8 BY MR. KRILL:
9 Q Dr. Brunell, with respect to Table 1 of Plaintiff's
10 Exhibit 12 did you have any observations about the weighting
11 that was given by Dr. Lichtman to the election results?
12 A To his Democratic strength?
13 Q Yes.
14 A That. Yes, I -- again I don't -- his decision rule for
15 how he chose which elections, you know, initially he said he
16 chose all elections in even number years, but then it was
17 pointed out that there was one special election in the odd
18 number of years , and now he says that's the one exception.
19 Um, I'm not sure why he didn't include the judicial races off
20 year because, she's testified in previous cases, those
21 types of elect ons can give you an idea for the sort of the
22 base partisanship. The people that aren't really excited
23 about presidential elections or even congressional elections
24 aren't going to turn out, so it might give you -- could bear
25 some weight on this relationship between Democrats and

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Republicans. And so I would -- I think I would quibble with the method that he's chosen to come up with the 50.3. Again I don't think hat's true. I don't think that that 50 represents accurately the strength of the two parties in the State of Pennsylvania.

Q Doctor, call your attention to Table 7 of Plaintiff's Exhibit 12, that's Dr. Lichtman's ranking table. Did you hear him describe that?

A I did.

Q Have you ever seen a table like this described in any of the professional literature or the science?

A I have seen these components, of course, we always talk about the facts, but I have never seen anybody rank things like this and then take an average of the ranks, I have never seen that ever.

Q Is that meaningful output for a table?

A I don't think so.

Q Why not?

A These different components all have meanings of their own. There is no reason to rank them. This is not the Olympics, right. If one bobsled team beats another by .001 seconds in the Olympics, we give one a gold and one a silver, but we don't do that with redistricting plans. If one is ever so slightly more compact than another, then we don't give one the gold and one silver and throw one out because,

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you know, of these ranks. We don't hand out medals. We can just simply look at these numbers. They stand on their own. All right. I think the Court can interpret the difference between 13 municipal splits and 18 municipal splits. There

is no reason to prescribe this artificial rankings and try to make more differences out of the plans than there really is.

Q I call your attention to Plaintiff's Exhibit 12, Table 9. You have heard Dr. Lichtman's testimony about Table 9, didn't you?

A Yes.

Q What observations do you have regarding Table 9?

A Um, I mean, I can -- what this shows is that the voting behavior in precincts is relatively stable over 10 years. So a precinct that voted 75 percent Democrat in one year is probably going to vote around that same amount the next year, and I don't think that's surprising at all. I think it shows the stability. There is a very sharp correlation between years for how precincts vote. So it just demonstrates the stability of voting. And I think that this is -- this is reasonable, and I believe the output in this conclusion.

Q Now I'd like to call your attention to Table 10 --

A Yes.

Q -- of Plaintiff's Exhibit 12. What observations do you have about Table 10?

A So a valid criticism of the work, another valid

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criticism of the work of Dr. Lichtman's was that he didn't use any congressional data at all. I mean, that's really fundamentally that we're interested in here today, congressional elections. So he correctly I believe tried to link the statewide data that he used to congressional data to show that there is a positive. Since we're drawing conclusions about congressional elections, you're going to have to demonstrate that if you use statewide elections, there better be a good relationship between the two. And I think here he shows that there is a strong positive

relationship. A lot of times we heard yesterday that there is just a 1 to 1 relationship between congressional elections and statewide elections, that I disagree with, and the best way to look at this is simply look at these correlation issues. If there truly was a 1 to 1 relationship, then these correlations would be exactly 1.0, the maximum it could be. If it were even .9999, there is no longer a 1 to 1 relationship. They are positively related. It's not a 1 to 1 relationship. They do differ.

Q Now Dr. Lichtman dropped uncontested elections, and the record shows that there were three times as many Republican uncontested elections as there were Democratic. Is there a technique that Dr. Lichtman could have used to avoid let's say dropping disproportionately more Republican votes than Democratic votes?

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A Some analysts instead of throwing out elections that are uncontested will impute election results, and one of the kind of the standard approach is just to impute that the winning party, whichever party that contests it, will impute 75 percent of the vote. If we throw those votes out, then we're losing those data. In reality one of the reasons why it's uncontested is because they come in so strong. So you could impute the 75 percent into those particular cells to kind of impute what might have happened if there were a challenger.

Q Is there any standard technique that persons in your discipline use that incorporates that kind of imputation?

A Yes, and I forgot to mentioned -- well, I haven't mentioned up to this point, I think that the best method to measure partisan bias is -- the most systematic, the most rigorous method available today is a program called Judgeit,

which is one word, J-u-d-g-e-i-t, and this was developed by Professors Gary Kane and Andrew Duncan, and it was developed specifically for the question that we're addressing here today. They were both involved in court cases like this trying to get at the question of partisan bias in electorial systems, and they developed a canned software package to measure partisan bias. And it gives us estimates, like Professor Lichtman did, of 24 percent, but is uses congressional data and it also provides another important

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component which is measure of standard of error, right.

There is an old joke that statistics means never having to say you're certain, right? There are some truths to that, - right? As statisticians, we never say it's going to be exactly 24 percent. We can give you a point estimate of 24 percent, but it's going to be plus or minus, right.

We can't -- whenever there are polls, you always see the plus or minus 3 percent range, the 95 confidence level. Okay, so there is an element of uncertainty, and Judgeit uses that and reports it. It gives us all a better idea of where the real -- where the true partisan bias might really be.

Q Now in statistics, whether or not you're using Judgeit, is it a standard practice in your profession to report the margin of error for any analysis?

A Yes.

Q Did Professor Lichtman do that?

A His method wouldn't allow him to do it, which is one of the major shortcomings. He couldn't. It wasn't a technique that would allow him to derive an estimate with measures of error associated with it. So it's not that he didn't, it's that he couldn't because he didn't use Judgeit, which he should have used, to measure partisan bias.

Q Now I call your attention to Table 11 of Plaintiff's Exhibit 12. What observations do you have about Professor Lichtman's Table 11?

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A This again is related to Table 10. This is where again where he's further drawing this notion. This is really where he draws this notion of a 1 to 1 correspondence, and he repeated that quite often, and again even this table shows that there is not a 1 to 1 correspondence. There is only one year, the final year, that the estimate is 1.0, and, you know, what's the next digit, I'd like to know that? It might be 1.04, in which case again it's not 1.0.

Q Excuse me, when you said what's the next digit, why is that a concern to you?

A Well, you see in some of these he does report two digits after the decimal point and in the others he doesn't. So I think at the very least I'd like to see two digits after the decimal point because that's too close to leave that second digit, that second digit decimal point out.

Q In the field of statistical and political science is it standard practice to use uniform reporting; that is, if you're reporting two digits in one place, that you report two digits always?

A Yeah, I think you usually pick, you know, a reasonable number of digits to report. You just report them all that way.

Q All right. DO you have any other observations about Table 11?

A Yes, again I think I would -- I disagree with the 1 to

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1 correspondence between statewide and congressional elections, and I think again the best way for the Court to interpret that is just to look at Table 10. Those are reasonable correlations of the relationship between the two. It's clearly not 1 to 1, that's obvious. These are regressions, slow coefficients, and Professor Lichtman testified yesterday that every congressional output also has -- there is another element to this, and that's called the constant, right. He talked about Y equals A plus B times X. The A is critical in your regression equation. It's half of the equation.

Q Is the A in the equation the constant?

A That is the constant, yes.

Q Can you explain in layman's terms what the constant is in a regression analysis?

A I'll do my best. The constant would give us an idea about how -- in this particular context it would give us an idea about how congressional and statewide elections differ systematically. Let's say there was 5 percent. That would indicate that the Democrats in statewide offices always do 5 percent better than the Democrats in congressional elections. So it could be -- it could give us more leverage. It would definitely give us more leverage on this notion about the relationship of the congressional and statewide elections, and without it reported here, we don't know what it is. We

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could assume that it's 0, but I'm 99.99 percent sure that it is not 0 in all of these progressions.

Q In your field is it standard practice when doing a regression analysis to report the constant?

A Absolutely.
Q Have you ever seen anyone in your field report a regression without reporting a constant?
A No, not for this kind of relationship that he's trying to show I would have always reported the constant for this.
Q What observation do you have about Table 11 with respect to the confidence level?
A He did provide -- he did provide a statistical significance for slow coefficient, which are these numbers here, (Indicating.) but again he should have reported the constant and its standard error, and he could have also reported for us the standard error for each of these coefficients so we can get an idea about, you know, about the balance of confidence that we have for these estimates.
Another thing is I'm not sure if he weighted this regression or not. I mean, we're starting to get into some detechnical stuff for these kinds of cases, but whenever -- so he used the precinct level data to run this regression. We heard Mr. Novinger John's testimony ear lier that precincts in Pennsylvania go from 0 people to about 6,000 people, so they can vary greatly. Now if there were any

precincts with 0 people in it, Dr. Lichtman wouldn't have included them because there would be no votes. So let's say there are some precincts that have a couple dozen people in them and some would have a couple thousand, when you run this regression, regression will automatically treat each observation completely equally, and I think it's clearly the case that that's not the appropriate method of running regression. Luckily we have come up with ways to weight the regression and you usually weight it by the size of the precinct, the public population, and that can change the

estimates the regression level will give, almost certainly will change the estimates, and I don't know if he weighted them. He didn't say they were weighted by the population, so I can assume that they are not. I will go under that assumption that they are not, and they should have been.
Q All right. Is it standard practice in your field to report a weighting if you have done it?
A Yes.
Q Now yesterday did you hear Dr. Lichtman testify that he had done certain sensitivity analysis?
A Yes, I recall some of that testimony.
Q Do you see sensitivity analysis reported in his Exhibit 12?
A No.
Q In your field would it be standard practice to report

sensitivity analysis if in fact you had done it?
A Yeah, I think if you're going to run some of these checks on the data that bring all of that to bear, you know, improves what you have done, absolutely. So report what you have done so we all can see what, see what the sensitivity analysis tells us.
MR. KRILL: No further questions, Your Honors.
JUDGE NYGAARD: You may examine him.

CROSS EXAMINATION

BY MR. SMITH:
Q Hello, doctor.
A Hello, Mr. Smith.
Q I'd like to start with getting an understanding of what you mean by the term partisan bias. Would you agree that the term partisan bias means that if there is asymmetry in the way that a party's vote share is translated into its seat

share?
A Yes.
Q And so a bias plan is one where one party is able to win a given share of the seats without having to get as many votes as the other party has to get to get the same share of seats. Is that right?
A That's correct.
Q And another way to say it is that if the statewide votes split 50/50 in an unbias plan, each of the two parties

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would get 50 percent of the seats?
A In general. On my graph you could see that the line passes through the point at exactly 50/50. So in every single election you wouldn't expect it to be exactly 50/50, but in general that's the neighborhood that we expect it to be in, yes.
Q And the graph itself it's important that it pass through the litman of 50/50, not to the left or to the right, am I right?
A Right.
Q Because if it were to the left or the right, it would indicate partisan bias?
A If this whole curve were shifted one way or the other, then that would be partisan bias, and that's what Dr. Lichtman testified to, that basically this whole curve was shifted way out to one direction.
Q Right, he testified that they had many more than 50 percent of the seats, the Republicans do, with 50 percent of the vote statewide. Correct?
A Right, he testified with 50 percent of the vote, Republicans get 75 percent of the seats.
Q Now just so we're clear, you have never done any

analysis of any kind to come to an opinion yourself about whether that's true or false, have you?
A I did not run Judgeit to derive estimates of partisan

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bias. I have gone over in front of the courtroom here today just the most simple using Dr. Lichtman's own data and own exhibits, it's clear that his estimate of 24 percent cannot be true. It's clear. It's clear to me.
Q Let's back up and take this one step at a time. First of all, you have never done the kind of analysis which you say is the appropriate kind to decide whether the plan is bias, which is a Judgeit analysis. Is that right?
A I think.
Q Is that right or not?
A I think that Judgeit is the best way to get a partisan bias but I have not --
JUDGE NYGAARD: It would be helpful if you'd answer the question, and then if there is an explanation indicated by the question, you may do so. So do you remember the question?
THE WITNESS: I do.
JUDGE NYGAARD: Very well.
A I have not used Judgeit on Pennsylvania elections.
BY MR. SMITH:
Q And you have therefore not done the methodology which you testify is the best way to decide whether or not there is bias in the congressional method. Is that correct?
A I have not used Judgeit, which is the best method, the most reliable method to get accurate estimates of partisan

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bias. However, in response to Professor Lichtman's estimate, 24 percent, it's obvious from the data, without even using Judgeit, it's obvious that that can't be true, it's quite clear.
Q Well, it may be clear that the 24 is not the correct number at least in your view. You don't have any idea what the correct number is, do you?
A I don't. I don't have an estimate to provide.
Q You don't know whether there -- so you don't have an opinion whether or not that curve crosses the 50/50 mark or is way to the right of the 50/50 mark, do you?
A I don't.
Q In fact you studiously avoided through two trials coming to any opinion on that subject, have you not?
A No, that's not true.
Q Did you ever suggest that you might want to do an analysis to figure out whether there is bias in the congressional districting there?
A I'm sorry, I didn't hear the first part of your question.
Q Did you ever suggest to counsel that you might want to do an analysis to find out the answer to that question?
A No.
Q Now let me turn to your criticisms of Dr. Lichtman's methodology. I believe the first one that I heard was your

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assertion that Pennsylvania cannot be a 50/50 state, and you base that on a variety of elections that you refer to. First of all, you didn't mention the elections which go the other way such as the last three presidential elections. Is that

right?
A That's correct. I think that -- I mean, I think that's a good example of Democrats doing well statewide, and I think -- I think it has to do with a disjuncture between the national Republican party and the Pennsylvania Republicans. The national Republican party is clearly not the Pennsylvania Republican party, and they nominate people that a lot of Republicans in Pennsylvania don't like, so they are more likely to vote for a Democrat in those elections, but the statewide elections, the congressional elections, the state legislator elections, the Republicans win them all. I mean, they have the majority to all of these elections.
Q Dr. Brunell, one thing you also didn't mention is that the Democrats in almost every year get more votes for Congress in Pennsylvania than the Republicans. Isn't that right?
A That they get more votes total?
Q Yes.
A I don't know if that's true or not.
Q You didn't look at that?
A I didn't.

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Q Now, in any event, the bottom line is that whether or not this is a 50/50 state, Dr. Lichtman's analysis was using the statewide elections merely as a litmus test to try to ascertain whether Republicans and Democrats are fairly distributed among the new districts. Is that correct?
A I think he's trying to derive an estimate of the vote percentage statewide, a generalizable number for how the vote breaks down statewide, and he says that it's 50/50. I don't think that's true.
Q What he was using that vote for was to plug it into the

districts to see whether or not there were many more districts in which Republicans with 50 percent of the votes statewide have a majority than there are districts in which Democrats have a vote, a majority, in the district. Isn't that correct?

A He used it for exactly how he did it on the first sheet of paper.

Q I'm merely asking you to confirm with me that that is what he did. He was using the 50 percent statewide election average to ascertain whether or not Republicans carry many more districts then the Democrats with half the vote. Isn't that right?

A That's not entirely correct.

Q Well, in what way is it not correct?

A He was also using it to -- he wants to understand the

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relationship -- we all want to understand the relationship between seats and votes. He used this average over I believe 19 elections, is that correct, 19 statewide elections?

Q Yes, that's right.

A To derive estimates both statewide and for the individual congressional districts, to get estimates for both how these districts would break out individually but also overall. And again we know that some of those predictions using that method were wrong.

Q We also know that when the Republicans got half the votes on average averaging those 19 districts -- those 19 elections together, they didn't carry 14 of the 19 new congressional districts. That's a fact that's true, is it not?

A That's not a fact, but the method is incorrect, Mr. Smith. What he did did produce that output, but it was

wrong, and we know that by looking to see how it predicted past elections. It's wrong. Professor Lichtman admitted it's wrong. It's clear on the basis of the tables i. does not predict accurately all of the elections.

Q And you're saying it's wrong because there are some districts in which the Republicans get a majority of vote in the statewides but the Democrat was able to carry the congressional seat?

A No, I'm saying that sometimes it predicts that the

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Republicans win a district when actually a Democrat wins the district.

Q And Judgeit does precisely the same thing. Sometimes it predicts a Republican will win a district when a Democrat wins a district. Isn't that correct?

A Judgeit gives much better estimates, and it also has another component that tempers the estimates or --

JUDGE NYGAARD: Give us your answer first and then explain.

A Okay, I'm sorry, Mr. Smith.

BY MR. SMITH:

Q Is it true that Judgeit sometimes predicts that one party will win a district and the other party wins the district?

A There is no method of accurately predicting every single congressional election. However, what Judgeit does, one of the best aspects of Judgeit, is that it uses this notion of statistics, distributions of data, confidence intervals to replicate what happens in congressional elections over and over and over again. So we're not basing it just on a small set of data. It tries to get a much more general idea about what happens by replicating the data over

and over again. So instead of making one prediction that the Democratic will win 52 percent of the vote, rather it will define distribution for that seat and say the point estimate

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is 52 percent, but we also know that we're going to be off by a couple percentage points. So now let's take random drawings from that distribution, and we'll do it over and over and over again to get a better idea about how -- what the true partisan bias is in that systems. That's why, that's one of the main reasons why, you have to use Judgeit.

Q Which you didn't do. Now do you recall Dr. Lichtman's testimony about the mechanisms by which a plan becomes bias, which is to say that the disfavored party has the voters packed into a small number of districts or spread out in the minority status in the rest of the districts? Do you recall that testimony?

A I do recall that.

Q Do you have any opinion yourself about whether that exists in the congressional district that is currently under consideration?

A I didn't look at that.

Q You don't believe that looking at the results that Dr. Lichtman reported that one can draw the conclusion that the Democrats are packed into about five districts and fractured into the rest?

A Again I didn't look at that, Mr. Smith.

Q So you don't have an opinion even looking at his results whether or not he validly drew that conclusion?

A Regardless of the conclusions that he drew, I'm here to

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testify that based upon that part he testified that there is a 24 percent bias.

Q I'm not asking you about that. I'm asking you whether you have an opinion based upon the results that he reported that Republicans or Democrats are packed and fractured in these 19 congressional districts?

A I disagree with his estimate of partisan bias. I don't have any opinion about that. I disagree with -- if that is true, that will bear itself out in partisan bias, and I disagree with his estimates wholeheartedly for what the partisan bias really is.

Q Quantity?

A Yes.

Q But you don't know what the quantity really is?

A I don't. I know there is absolutely no way that it's 24 percent in favor of the Democrats.

Q But the bottom line is you're not disputing the conclusion that Democrats are packed in five districts and fractured in 14 districts?

A I didn't look at that, Mr. Smith. Again based upon the majoritarian principle alone, it treats both parties equally.

Q Now that we're -- what you mean by treating it equally is that in those 19 elections Democrats statewide won the election, then the Democrats carried the majority of the districts?

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A That's correct.

Q Now is that the same thing as saying there was symmetry in those elections, that the Democrats and the Republicans got a symmetrical amount of seats when they got a symmetrical

amount of votes?
A Not necessarily.
Q Did you study that question?
A No, because you would use Judgeit to do that.
Q It is also your definition of partisan bias to study that question. Isn't that right? You said the very first question I asked you is that partisan bias is an asymmetry in the translation of votes into seats.
A That's still correct, Mr. Smith.
Q And your discussion of the majoritarian principle in these 19 elections did not address that issue, did it?
A It does address it in part.
Q But it didn't address it to the point that you come to a conclusion that there is symmetry between the parties?
A That's correct. I think that there should have been a Judgeit analysis run to show what the true partisan bias is. I'm just responding to what Dr. Lichtman has done.
Q Now I have prepared a demonstrative exhibit of our own, Dr. Brunell, which I have marked as Plaintiff's Exhibit 22. This, Dr. Brunell, is just taken straight from Defendant's Exhibit 89. It just reports the election, the nine

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elections -- nine of the elections that were reported in Defendant's Exhibit 89, and what this shows is that the Republicans won elections with 51 percent of the vote six times, and in those six elections they got either 13 or 14 districts, and the Democrats got either five or six districts. And it goes on to look at four elections where the Democrats won with between 52 and 56 percent of the vote, and in those elections the Democrats carried either 10 or 11 seats. Do you see that?
A I do.

Q And do you have any reason to dispute these figures?
A I don't.
Q And if these figures are correct, does this not establish that there is a gross asymmetry between the ability of the Republicans and the Democrats --
A Not necessarily.
Q Excuse me, I'm still speaking.
A I'm sorry.
Q -- to translate votes into seats as demonstrated by these elections?
A Not necessarily. Again you can point to some certain elections, and again, I mean, I think that this is a perfect exhibit, Mr. Smith, to say that Dr. Lichtman's analysis is completely wrong. At 50/50 we expect 3 to 1 in favor of the Republicans. Show me any of these elections where we have

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this nine seat differential.
Q Excuse me, these are 51 percent elections, and in three of them they do win almost 3 to 1. Fourteen to 5, do you see that?
A I do, but then look at the Democratic districts, right, they also get a majority of seats. Where is the asymmetry? Where is this humongous asymmetry between the parties?
Q Is it your testimony that there is no asymmetry demonstrated by the exhibit?
A That's not my testimony. The asymmetry that Dr. Lichtman testified to is clearly not there, and if you use Judgeit, you can get estimates for what the asymmetry might be, what the asymmetry is.
Q And if you use Judgeit, you would be able to tell us. Is that right?
A Yes.

Q Now I believe you testified that one of the things that Dr. Lichtman did wrong was that he didn't study congressional data, he used statewide elections to be the litmus test by which he ascertained that there was partisan bias. Now you yourself in testimony you gave six months ago in the State of Texas reported analysis of partisan bias in which the only thing you had done was to use statewide elections plugged into the new districts to ascertain whether there was partisan bias. Isn't that true?

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A I did a very similar analysis, Your Honors, to what I did here today in terms of the majoritarian principle, and this is another take on the partisan bias question. But again in that case it was a completely different case, Mr. Smith, as you know. Your expert had already testified to what the partisan bias was using Judgeit, and I think you extracted from me the admission that Judgeit was the best method, I believe that I said that under oath on the stand in Texas even though I didn't do it, and I remain, that opinion has not changed. I still believe that's the case.

Q And you criticized the expert that used Judgeit and came in and did an analysis which in its essence is indistinguishable from the one that Dr. Lichtman presented in that you used statewide elections, plugged them into the new districts and ascertained whether or not each party is getting a fair share of the seats. Isn't that right?

A That's completely untrue.

Q What way is that untrue?

A I never in Texas provided an estimate that there is X percent bias in the Texas case.

Q Did I ask you whether you did that?

A You asked me if it was similar to what Dr. Lichtman

did. That's what Dr. Lichtman has done, and that's not what I did. That's not what I did because that's what you use Judgeit for. I didn't do that in Texas. I'm not doing it

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here today using this analysis.

Q What you did do in Texas was testify that having plugged the statewide elections into districts and the Republican were closer now because -- where the elections were 50 percent, the Republicans carried 50 percent of the seats and that therefore was an indication that that meant it was unbiased. Is that right?

A I'm sorry, I'm no t-- I didn't follow that entire whole line.

Q Maybe it was a poorly phrased question. The heart of your testimony in Texas was that a particular proposed map was not biased, and you came to that conclusion by plugging statewide elections into the new districts and ascertaining that where the Republicans got 50 percent of the votes, they got 50 percent of the seats. Is that right?

A No, that's wrong.

Q Let me ask you then to turn to Defendant's Exhibit 50, which I believe is your report from the Texas litigation. Do you have that?

A Fifty, 5-0?

Q Defendant's Exhibit 50 in a white book, binder 3. Do you have that?

A I do not.

MR. KRILL: Your Honors, I'd object to this line of questioning because I think we're here to litigate

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Pennsylvania, not to relitigate Texas, and I think this is clearly veering away from relevance.
JUDGE NYGAARD: I think he's challenging some of his methodology, and I think it's a legitimate line of questioning. Overruled. I don't seem to --
JUDGE YOHN: Binder 3.
JUDGE NYGAARD: I have it.
JUDGE YOHN: It's your exhibit.
MR. KRILL: Yes.
BY MR. SMITH:
Q Let me speak, it's also in our book. It's Defendant's Exhibit 11 is the same -- Plaintiff's Exhibit 11 is the same as Defendant's Exhibit 50. Do you have that?
A I do.
Q This is your report to the state board in the Texas congressional litigation?
A Right.
Q Turning to page 3 of the exhibit the underlined portion, you said to the court there, quote: "It is important to note that the line across the point at 50/50; that is, if the two parties split the vote 50/50, they also each get 50 percent of the seats. Political science literature refers to deviation from this idea as 'partisan bias'." Is that in fact what you told the state court in Texas?

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A Yes.
Q And your conclusions in that report were based entirely on statewide elections?
A Yes, what I did for Texas --

Q Yes or no, were your conclusions based entirely on statewide elections?
MR. KRILL: Objection, Your Honor. The witness said yes and then proceeded --
JUDGE NYGAARD: Did you say yes?
THE WITNESS: I did say yes.
JUDGE NYGAARD: Go ahead.
A Um, the -- first, I used all statewide elections, including judicial races, which Dr. Lichtman did not. Second, I made graphs for each -- for maybe five different plans that were proposed in the Texas case to demonstrate -- actually the first one is for the plan that was in effect during the '90's in Texas, and then I did it for four proposed plans to demonstrate how each of these comported with this same -- with the majoritarian principle. It's exactly the same thing that I did up here in my testimony.
BY MR. SMITH:
Q You told the court in Texas that the reason you were using statewide elections, as opposed to congressional elections, was that congressional election results have complications that incumbency and variance in cross races in

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terms of campaign finance, candidate quality and a whole host of other variances. Did you not tell them that?
A I did tell them that.
Q You also in the State of Texas did nothing to correlate statewide election results with congressional election results. Is that right?
A I don't recall here.
Q So while you came into court here today to criticize Dr. Lichtman's presentation of his correlations here, you did nothing of the sort when you gave similar testimony in Texas.

Is that right?
A I don't recall doing it, and if I did, you know, I wouldn't be surprised if you didn't take me to task on the stand for not doing it, Mr. Smith.
Q Do you have any criticism at all of the other half of Dr. Lichtman's testimony which is the way in which Act 1 treats incumbent congressmen?
A No, I didn't look at that.
MR. SMITH: Nothing further, Your Honors.
JUDGE NYGAARD: Redirect.

REDIRECT EXAMINATION

BY MR. KRILL:
Q Dr. Brunell, Plaintiff's Exhibit 22, which purports to be a summary of data from Defendant's Exhibit 89,
A Right.

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Q -- I note that on the bottom half of that exhibit three of the four races are national Republicans v. national Democrats.
A Correct.
Q Does that suggest anything about that point that you raised in your direct examination regarding a disjunct between national and state parties?
A Yes, I think it does. I think that there is some reason why national Republicans don't do well in the State of Pennsylvania, and I think it has to with a disjuncture between the national Republican party and the state Republican party. And again there is no -- there is none of this 3 to 1 bias. When the Democrats get the majority of the votes, they get the majority of the seats as well.
Q Now in Plaintiff's Exhibit 11, which is labeled your supplement analysis to partisan bias in the Texas case.

A Yes.
Q You did graphs that have dots instead of lines. Are those in some essential way different than the graph that you did in Exhibit 1?
A No, I actually drew that same -- the hypothetical curve depicted in Figure 1, and each one of the following figures, Figures 2 through 6 or 7, Figures 2 through 6, is just each one of those dots represents a single statewide election, and again we can figure out does this plan comport with the

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majoritarian principle or does it not by using each of those elections in graphing the Democratic vote percentage and the Democratic seat percentage.
Q Now in Plaintiff's Exhibit 11 on Figure 1 the hypothetical curve crosses right at the 50/50 point. Right?
A That's correct.
Q In that hypothetical case would that mean that there was no single election that violated the majoritarian principle?
A No, obviously there is elections usually aren't 50/50, right, even if they were, we probably couldn't actually tell that was the case, right? We reference this last presidential election. But this is the neighborhood that we expect things to be. I mean, the last presidential election was a pretty -- it might be a pretty good example, both candidates were very close in terms of votes, and the electorial college votes were actually very, very close as well. So it was kind of this symmetry between seats and votes.
Q But then you mentioned the Reagan/ --
A Mondale.
Q -- Mondale election as an example of a lack of

23 proportionality --
24 A Right.
25 Q -- between seats and votes. Correct?

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1 A Yes.
2 Q Yet it still adhered to the majoritarian principle?
3 A Right. You do not want to be the minority party in a
4 single member winner take all system because you lose a
5 disproportionate share of the seats, that's the way the
6 system is set up, and it's perfectly reasonable.
7 Q Now if you were to plot the 19 elections for
8 reaggregation shown in Defendant's Exhibit 89, Plaintiff's
9 Exhibit 13, under Act 1 where would all 19 of those elections
10 fall in your graph that is Defendant's Exhibit 102?
11 A They all fall in the upper right-hand quadrant or the
12 lower left-hand quadrant.
13 Q And what do those quadrants represent?
14 A The majoritarian principle at work. Whichever party
15 received the majority of votes also gets the majority of the
16 seats.
17 MR. KRILL: Thank you. No further questions.
18 JUDGE NYGAARD: Recross.
19 MR. SMITH: No, sir.
20 JUDGE NYGAARD: Any questions on recross?
21 MR. SMITH: No, sir.
22 JUDGE NYGAARD: You may step down.
23 MR. KRILL: Your Honor, I move the admission of
24 Defendant's Exhibits 101 and 102.
25 MR. SMITH: No objection. I move the admission of

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1 Plaintiff's Exhibit 22.
2 MR. KRILL: Although it -- recognizing that it
3 represents a summary, and we have not had time to check its
4 relationship to the underlying exhibit, Your Honor, I have --
5 with that reservation I have no objection.
6 JUDGE NYGAARD: All three are admitted.
7 HANK HALLOWELL, called as a witness, being duly
8 sworn or affirmed, testified as follows:
9 MR. KRILL: Your Honor, I call Mr. Hank Hallowell.
10 THE CLERK: State you name please.
11 THE WITNESS: Hank Hallowell.
12 THE CLERK: And would you spell your last name?
13 THE WITNESS: H-a-l-l-o-w-e-l-l.
14 MR. KRILL: Your Honor, before we proceed with Mr.
15 Hallowell, Dr. Brunell's wife is expecting their first child,
16 and today is her due date, and I'm -- I would ask the Court
17 permission to release him so that he can head back to
18 Binghamton, New York.
19 JUDGE NYGAARD: You don't have any objection to
20 that, sir? Nobody wants to be responsible for keeping you
21 here.
22 DR. BRUNELL: Thank you.
23 JUDGE NYGAARD: Thank you, you may go.
24 DR. BRUNELL: You're welcome.
25 DIRECT EXAMINATION

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1 BY MR. KRILL:
2 Q Mr. Hallowell, how are you employed?
3 A I'm a partner with the firm of Hallowell & Branstetter.
4 MR. KRILL: Your Honors, I have handed Mr.

Hallowell Defendant's Exhibit 51, which is in binder 3.
BY MR. KRILL:
Q Can you identify Defendant's Exhibit 51, Mr. Hallowell?
A Yes, it's my CV.
Q How long have you been with Hallowell & Branstetter?
A Since 1999.
Q What's your position there?
A I'm a partner.
Q What do you do?
A We're a political consulting firm.
Q What type of political consulting do you do?
A We limit our work to Republican candidates running for the legislature for state house, state senate, for U.S. congressional races.
Q Now before you formed the firm of Hallowell & Branstetter how were you employed?
A I was employed by the Pennsylvania State House Republican Caucus, and I was the Director of the Department of District Operations.
Q And what did that job entail?
A We were ultimately responsible for the smooth and

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efficient operation of the district offices of the 103 I believe Republican members of the Pennsylvania General Assembly.
Q Now in 1998 did you have a job of -- that involved electorial politics?
A Yes, I was Executive Director of the Republican State Committee of Pennsylvania and also simultaneously Executive Director of the Republican House Campaign Committee.
Q And in those jobs what were your duties?
A Well, they were numerous. I -- with the, if I can

divide the two jobs up for you, --
Q Sure.
A -- the state party job we coordinated the races that occurred within Pennsylvania, that cycle which included the governor's reelection effort, Senator Spector's reelection effort, all party building activities, the absentee ballot program across the state, coordinated efforts between all 67 county party chairmen, and I was also responsible for fund raising, for keeping the operation running as well. There are probably additional responsibilities, but those were the basic ones. But the House Campaign Committee I was responsible for candidate recruitment, which requires countless trips across the state interviewing any perspective person that we think might be in their wildest dreams interested in becoming a house member. And then ultimately

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targeting the elections that we were going to be interested in retaining the consultants to do the mail, the TV, the polling, hiring the managers to actually run the races and then execute the plan.
Q The second page, third page of your curriculum vitae contain a list of election races. What do those represent?
A Well, they are a -- kind of a very bumpy road from about 1982 until the present of some of the larger races that I was involved in either as a manager or in my job as executive director of either of those bodies or in our consulting firm to date. There are some small county municipal races that are not included in that, but those are the major ones.
MR. KRILL: Your Honor, I offer Mr. Hallowell as an expert in political consulting in Pennsylvania.
MR. SMITH: No objection.

BY MR. KRILL:
Q By the way, Mr. Hallowell, when you were first asked in this case whether you considered yourself an expert, were you uncomfortable with that term?
A Well, I don't like the term, but I understand the legal connotation of the term.
Q Why don't you, why don't you like this?
A Well, I know this may seem strange to many people, but I'm a Quaker, and I don't like that sort of terminology,

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self-grandizement, et cetera.
Q Well, I'm afraid the lawyers have forced it on you.
A Right, I understand.
Q Now you heard Mr. Ceisler's testimony, didn't you?
A Today, yes, or yesterday and today, yes, I did.
Q And previously you heard his testimony at the Daubert hearing?
A Yes, that's correct.
Q And did you also hear his or read his deposition testimony?
A Yes. Yes, I have.
Q And you heard Mr. Ceisler's conclusions about Act 1, didn't you?
A Yes, that's correct.
Q Do you agree with his conclusions?
A Not entirely, no, I don't.
Q Let's examine some of his conclusions piece by piece. First, I'm going to ask you to refer to the map of Act 1. Now Mr. Ceisler testified that he felt that Congressman Mascara or another Democrat couldn't win in district 18 or would have a very hard time winning in district 18. Did you hear him to that effect?

A Yes, I did.
Q First, with respect to Congressman Mascara, after hearing Mr. Ceisler's testimony and, by the way, you heard

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Congressman Mascara's testimony in Commonwealth Court, too, didn't you?
A Yes. Yes, I did.
Q Now, well, prior to this case beginning, when you first took a look at the redistricting under Act 1, did you believe that Congressman Mascara could win in district 18?
A I thought it would be between Senator Murphy and Congressman Mascara.
Q Yes.
A I thought it would be very close. I believed as a Republican, of course, that state Senator Murphy would defeat Congressman Mascara, but I did think it would be a very tough, close race.
Q Now do you think that the 18th district is unwinnable by a Democrat?
A No, I do not.
Q I'm showing you Plaintiff's Exhibit 2B, which is a blowup of the 18th district.
A Yes, I see that.
Q Why don't you think the 18th is unwinnable?
A Well, contrary to much of what we heard here, the South Hills, which, of course, is that tier of the 18th between the Washington County line and the Allegheny 14th district line, has a long history of electing Democrats. Now currently we talked about how Senator Murphy is seated there and how --

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and I have testified previously that we hold three Republican house seats there in that region running roughly from Bethel Park in Mount Lebanon all the way over to Moon Township in the far, far left. But, let me say this, while I was Director of the State House Campaign Committee, in order to retain those seats we spent $480,000 on two seats in a general election and in a special election to regain the three. At the same time my colleagues at the other side of the capitol were spending $450,000 to elect now state Senator Murphy who is running for Congress. Those are very big numbers that we used to pick up those seats, which is what two of those seats were for the house, they were called a pickup. When you have an open seat, you pick it up. Prior to 1995 when I first unveiled those budgets to Speaker Ryan and the Majority Leader Perzel, they had really spent $60,000, those kinds of numbers in the house seat. They had never seen anything like that, and I can still remember the look on the speaker's face when I gave him those budgets. But quite frankly we have those seats because of good candidate recruitment, bad candidate recruitment on the part of the Democrats and then executing aggressive campaigns through the region.

Q What are the elements of an aggressive campaign, of the aggressive campaigns that you executed there in that region?

A Well, first a candidate -- let me go back a step, first

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candidate that is a strong contrast to the opponent. For example, if I can use an illustration, in the 44th district they had an outgoing member that had been there a number of years named Tug McGraw or Huck Gamble, rather, and they

nominated in a contentious primary a fellow McGraw who served previously in the house in the late '60's and early '70's who had missed 3,000 votes. We nominated a young army veteran who had gone to West Point. It was a strong contrast. A similar situation in the 42nd --

Q Excuse me, when you say that the Democratic candidate missed 3,000 votes, you mean legislative votes?

A Yes, that's correct.

Q Not being in his seat when the votes were taken?

A That's correct, 3,000, roughly 3,000 legislative votes, an awful lot quite frankly. Then we ran aggressive -- both the house and senate ran aggressive campaigns. That's means an active voter contact plan, 12, 14, 15 pieces of targeted mail, a thousand gross rating points on broadcast television in the Pittsburgh media market. That's an aggressive campaign.

Q That's what it took to win that district for the Republicans?

A Yes. If I spent all of that money and hadn't won it, I'd hate to have thought what the consequences would have been. But my point, my larger point, is that the Democrats

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in the South Hills of Pittsburgh are not running out voting Republican at their earliest opportunity. It takes a lot of work and coordinated effort for that result.

Q So how important is that organizational factor in terms of a pattern of Republicans getting Democratic votes in western Pennsylvania?

A It's crucial. I mean, there is no other way to do it quite frankly. Now we're faced with an open -- apparently an open congressional seat where we have a state senator, not a Republican state senator facing -- well, we'll know by 5 p.m.

today who he's facing, an unknown apparently Democrat, and quite honestly again it's a case of candidate recruitment, and I think the Democrats inexplicably seem to be attempting to set themselves up for a loss here, and I can't understand why.

Q Why do you say the Democrats are setting themselves up for a loss in the 18th?

A Well, apparently they don't have a strong candidate. The only candidate that I have heard rumored about is a potential for the Washington County sheriff to run there, and I have no idea whether that's true or not, Your Honors, that's just what I have heard. So it quite frankly looks as though they're going to continue their recurrent history of losses in the South Hills.

Q Now let's turn to another congressional district, while

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we're on Plaintiff's Exhibit is it 2D?

A 2B.

Q 2B, as in boy, let's look at the 4th congressional district under Act 1. You're familiar with that district, aren't you?

A Uh-huh.

Q Is that a yes?

A Yes, I'm sorry, yes.

Q And who is the incumbent in that district?

A I believe that that is Melissa Hart.

Q Now who held that district before Congresswoman Hart?

A Representative Klink.

Q And was he a Democrat?

A Yes, he was.

Q And when did Congresswoman Hart win that seat?

A 2000, the 2000 election.

Q Just two years ago?

A That's correct.

Q So she turned it from a Democratic held seat to a Republican held seat?

A That's correct, it was an open seat, and she ran for it.

Q Was that an easy win for her?

A No, it was a similar scenario. Again in North Hills the same dynamics really occur at all levels quite frankly of

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elected politics in Pennsylvania. It was, you know, an aggressive campaign put on by a good candidate versus a campaign really by the Democrats that faltered for similar dynamics that we discussed in the South Hills, and then we, the Republican, excuse me for the we, went on and our firm did the race and special election to retain her state senate seat against Jim Renee.

Q Where was the state senate seat?

A It's -- can I get up?

JUDGE NYGAARD: Sure.

A It's right in this area. (Indicating.)

BY MR. KRILL:

Q The witness is circling the area --

A Actually over that way.

Q -- around the red No. 4 on Exhibit 2B, as in boy.

A And again it was a similar situation.

Q What was the situation there with her state senate district that she was giving up for Congress?

A Well, the Democrats recruited someone who had seemed to be a great candidate, the son of the owner of the Steelers, against a house member who had represented this area of the district, and our candidate made thousands of telephone

calls, and quite frankly the Democrat Jim Rooney did exactly what I would have hoped he'd done, rather than differentiate himself from his family and try to develop his own image, he

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ran on the fact that his grandfather was Art Rooney, and they had Franco Harris going door-to-door and taped telephone calls and all sorts of Steeler memorabilia, and they ultimately I think in a race that is 40 -- maybe 42, 43 percent Republican, we ended up with 60 percent of the vote in the special. So it's just really indicative of the region and the kind of races and candidates that the Democrats seem to put out. And I don't understand it, but from a partisan standpoint I'm thankful.

Q Now Congresswoman Hart is a freshman member of Congress. Is she also a fairly young member of Congress?

A Yes, sir, that's correct on both counts. I don't know her age, I couldn't tell you.

Q I'm not going to ask you.

A Okay.

Q But is it fair to say that she's, you know, she's in a position where she might easily run for a state row office or for some other political office?

A I think that's a fair, fair statement, yes. It's hard to know what's -- I don't know what's in the Congresswoman's mind, but I'd say she's positioned to do such a thing.

Q And such things do happen, don't they?

A Yes, that's correct.

Q If Congresswoman Hart leaves, gives up that seat to run for another office somewhere, would that -- would under Act 1

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would district 4 be a safe Republican open seat?

A No, no, it definitely -- most definitely would not.

Q Why?

A Well, first of all, other than the three urban congressional seats, and by that I mean the two in Philadelphia and the one in center Pittsburgh, I personally do not believe and could make a case that there are legitimately no safe seats, open seats, in Pennsylvania. When a seat becomes open, it isn't safe for either party. The 4th district I think could, depending on who the Democrats pick and who the Republicans might pick and what sort of campaign they ran, could go either way. And, unfortunately, we have a rich and checkered history of losing safe seats at various levels around this state, so it could go either way.

Q Well, let me ask if you recall an example of such a flipping of seats in history. Under the Pennsylvania Supreme Court's 1992 plan do you recall the history of the 18th congressional district under that plan?

A To a degree I do but not overwhelmingly well, no.

Q Do you recall that that was a seat held by Congressman Santorum?

A That's correct, right.

Q And what happened to Congressman Santorum?

A Well, he obviously now is our U.S. Senator, but

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ultimately it was because he was facing a battle that he believed he could not overcome and took an even larger gamble and ran for the U.S. Senate seat that no one thought he'd win. Very similar to his history of being elected to the

U.S. House and io and behold he won.
Q You're saying that with respect to Congressman Santorum he had a history of no one believing that he could win?
A His first victory in the -- to Congress was an uphill battle. He worked very, very hard, very tenaciously, a great deal of voter contact, a great deal of one-on-one and overcame the odds with the help of his consultant and was successful.
Q And in that race did he unseat an incumbent Democrat?
A Yes, that's correct, it was an unexpected victory.
Q And then he retained the seat under the 1992 plan for one cycle?
A That's correct.
Q And then left to --
A In 1994, that's correct.
Q And when he left that seat to run for the Senate in 1994, did it stay Republican?
A No, it did not.
Q What happened to it?
A It reverted back into the Democrats' hands as the seats out there generally would go when the Democrats nominate a

decent candidate and run an aggressive campaign.
Q And do you believe that that could still be the case for the Democrats under Act 1 in western Pennsylvania?
A Absolutely because if it weren't -- well, let me go back and say if that were not the case, if that were not true, the senate and the house wouldn't have spent nearly a million dollars there in 1996 to pick up what we currently hold.
Q How many counties in Pennsylvania have you physically visited in your career?

A I would imagine I probably have been in all of them at one time or another.
Q Now while we're on the map of western Pennsylvania, let's look at the 12th congressional district where Congressman Murtha would be running as an incumbent and apparently running, as we know now this morning, against Congressman Mascara. First, let me ask you about the geography of the 12th district. Does the geography of the 12th district suggest anything to you about the political or economic history of western Pennsylvania?
A Well, it trails the river valley areas through western Pennsylvania. As you can see, in the north to Johnstown and then across the bottom through Westmoreland and Washington. They are the old and obviously not -- starting with Johnstown they are all the old mill totals and steel mill towns and that

sort of thing through the region. With the exception I think possibly of the upper portion of Indiana that's included in the district.
Q There are some coal areas in there?
A Yes, that's correct.
Q Would that be up in Indiana and down in green?
A That would be right, yes. I don't know how much coal or steel is done there now, but, I mean, that's the history.
Q Now let's turn to the eastern side of the state.
JUDGE NYGAARD: Before you go on to a new area, new subject, let's take our 10 minute break now and be back in here just a little bit before ten of three.
Mr. Krill, is this --
MR. KRILL: This is my last witness.
JUDGE NYGAARD: Your last witness. Okay.
(A recess began at 2:40 p.m. and the case continued

at 2:50 p.m.)
JUDGE NYGAARD: Mr. Krill.
(Hank Hallowell continued as the witness on direct examination.
BY MR. KRILL:
Q Mr. Hallowell, before we turn to southeastern Pennsylvania let me just ask you this, you appear to be in some discomfort while you're testifying. Is that true?
A It's just I had some shoulder surgery three and a half

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weeks ago, and it gets tough to find a comfortable spot for it.
Q Just please let us know if you need a break or --
A It will be fine.
Q All right, thank you. Now you have in front of you plaintiff's exhibit map that is a blowup of Act 1 for southeastern Pennsylvania. Mr. Hallowell, have you consulted on or run campaigns in southeastern Pennsylvania?
A Yes. Yes, I have.
Q Can you name just a few?
A Well, my very first one I managed was Jim Coyne's congressional race in 1982 in the 8th district in Bucks County. I'm from Lower Moreland Township. I have -- I was a committeeman there for seven years I suppose, and obviously as a committee person, you're involved in every race that comes down the road. We did the county commissioners race there in 1991. I did a number of state house races there. We did the Tilghman versus Yeakle race in the 17th Senate seat. I did the 1992 congressional primary there to name a few.
Q Now let's look at the 13th congressional district under Act 1. Are you familiar with that?

A Yes. Yes, I am.
Q Now you heard Mr. Ceisler's opinion about the 13th where he thought that Congressman Hoeffel would -- I'm not

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sure exactly how he phrased it, would basically have an uphill fight?
A Well, he believed that if I guess Congressman Borski, he'd have an uphill fight against a prolife Democrat from Philadelphia, and in the absence -- and then, excuse me, then a Republican would stand a good chance of defeating Mr. Borski in the general election, and I believe yesterday said that it looked like Congressman Hoeffel would be successful and ultimately then had a better chance of winning the general election against a Republican.
Q And do you agree that Congressman Hoeffel is likely to win in a general election?
A Yes, I think the Democrats will retain the 13th district, I do.
Q And why is that?
A Well, currently it's held by Congressman Hoeffel. It now picks up a much larger number of Democratic voters from the city. Congressman Hoeffel ran for that office four times before he ultimately won it. He's a tireless campaigner, does an excellent job in communicating. I don't know whether that's due to Mr. Ceisler or not, but he does an excellent job at that, and I personally do believe that he will retain the votes that he gets out of the 13th district in the Montgomery County portion, and I think he'll do very, very well in what had been Representative Borski's district.

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Q Now the 8th congressional district, who is the incumbent there?
A Congressman Greenwood.
Q And he's a Republican?
A That's correct.
Q Has the 8th always been a Republican seat?
A No, no, it hasn't. I know that unfortunately all too well. It was in 1976 when Congressman Biester retired, the Republicans lost it to Peter Kostemyer, who held it until 1980 when he was defeated by about I believe 12 to 13 hundred votes by James K. Coyne, not to be confused by Congressman Coyne of Pittsburgh, and then in 1982 came back to defeat Congressman Coyne by I believe it was 640 votes and took the seat back and held it until he was then in turn defeated by Jim Greenwood.
Q So it's gone Republican, Democrat, Republican, Democrat, Republican?
A That's correct, I think that's correct.
Q Or something like that?
A Right.
Q And is the 8th district under Act 1 substantially the same as the historical 8th district that you have described?
A Substantially. I mean, as I said, I grew up in Lower Moreland Township, which is right at the very edge here, (Indicating.) and Lower Moreland had always been part of the

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8th district. There has always been a portion of that part of the eastern -- northeast edge of Montgomery County that's been part of the Bucks County district. That's how I was elected as a delegate to the Republican National Convention

because the two county chairmen had struck a deal that one seat went to that little piece in Montgomery County, and I was it.
Q Now you pointed to Lower Moreland Township. Is that in Montgomery County?
A Yes. Yes, it is.
Q And you're saying that historically it was in 8th district which is centered in Bucks County?
A It was in the 8th district up until I believe 1990. I think part of it was in it actually right up until 1990, that's correct.
Q And is Lower Moreland in the 8th district under Act 1?
A No, it's in the 13th.
Q However, you said that there has always been some part of Montgomery County that's been picked up by the 8th district, is that true, under Act 1?
A Yes, there is a portion of Upper Moreland, I actually lived for about six years in Upper Moreland Township when I was first married. They call that the panhandle of Upper Moreland and hugs Hatboro. That is in the 8th district of this map, and as it has been in that portion of Upper

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Moreland has been in the 8th district in the past, and then goes over and picks up a portion of Upper Dublin and it looks like a ward or two of Abington Township.
Q Now what you have just described, those portions of Upper Moreland and Upper Dublin and Abington that are in Montgomery County but are part of the 8th district, have you heard that geographic area referred to as the "Greenwood gash"?
A Yes, I heard Congressman Hoeffel refer to it that way in testimony in the Commonwealth Court.

Q But you're saying some or another part of Montgomery County has always been attached to Bucks County in the congressional district?
A Yes, that's correct.
Q Now the 6th district under Act 1, there is no incumbent there, is there?
A No, that's correct, it's I characterize it as an open seat.
Q Now over the past decade there have been population shifts in southeastern Pennsylvania, haven't there?
A Yes. Yes.
Q Can you describe those shifts?
A Well, there has been a substantial amount of development. When I was -- years ago, I go 20 years ago, most of the -- well, in fact I'll use my own home as an

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example if I could. Our place was a family farm that had been in the family for 200 years. We subdivided that in 1960. The subdivision -- and that's Lower Moreland at the very edge. That would be 1960. The subdivision has gradually creeped out. Now it's as far out as this center ring and arc shape through that portion of southeastern Pennsylvania. So the suburban sprawl, we have heard it characterized as, that's one reason that open space is now a large issue with all of the voters in that region, has slowly crept, and it continues to creep out. I think it's in Upper Bucks. It's beyond Upper -- it's in Upper Providence and Limerick Township in Montgomery County, Franconia. It's very far out in Chester County. Delaware County is completely built out. So there has been substantial growth to answer your question.
Q Over the last 10 years what county in southeastern

Pennsylvania has been the biggest loser in population?
A Philadelphia, and they have come out into the areas that had been developed in the '50's, Cheltonham in Montgomery County. Most of the post war neighborhoods that were developed, Delaware County, for example, are seeing a lot of the Philadelphians move out to that area, and the folks who had lived in those areas have leap frogged out into central Bucks, upper Bucks, central Montgomery County, et cetera. So it's a migrational pattern that's occurring.

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Q Now I'm not asking you for precise figures, but have the suburban counties around Philadelphia experienced growth?
A Yes, they have.
Q Is it fair to say that with some exceptions it's been doubled digit population growth?
A Yes, I believe that that's correct.
Q What suburban county would be the exception?
A That has not experienced double digit growth?
Q Yes.
A Delaware County because, as I said, it's completely built out.
Q But you're saying then that Chester, Montgomery, Bucks --
A Buck, Lancaster, Berks, I believe Lehigh, Northampton, Monroe, Pike, all the way along that mountain ridge has experienced growth.
Q Now in terms of population shifts would that logically to you have an impact on where congressional districts are located?
A Well, yes, logically it would, absolutely. You have got to make up for the decrease in population in Philadelphia and at the same time compensate for an increase of growth in

the suburban districts.
Q Does an open seat in the fast growing area make sense to you?

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A Logically it does, yes.
Q Now the 17th congressional district under Act 1 now contains the residence of two incumbent congressmen. You're aware of that, aren't you?
A Yes. Yes, I am.
Q And who are they?
A Congressman Gekas and Congressman Holden.
Q And one is a Republican?
A That's Congressman Gekas is a Republican.
Q Congressman Holden is a Democrat?
A That's correct.
Q In your opinion is Congressman Gekas' victory assured in the 17th district?
A No, absolutely to the contrary. I think it's a -- I think it's a toss up.
Q And why is that?
A Well, first, Congressman Gekas is a long term -- he went in in 1982 when we went out of office. He's a long term incumbent. To the best of my knowledge he has not had a difficult race in a very long period of time. When I say difficult, a challenging race. I believe I have a vague understanding of what his cash on hand is in his campaign account, and to the best of my knowledge it is or was under a hundred thousand dollars. Congressman Holden, on the other hand, has a long history of being very aggressive, very

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popular, runs real races because he's challenged, and I was contacted by the National Republican Congressional Committee two years ago during 2000 to help them find a candidate and candidate recruitment since I have done so much of it, and I talked to the district attorney of Berks County and surveyed that city. When I saw we, let me clarify we and say the National Republican Congressional Committee paid for a survey of that seat so we could see whether it was winnable or not.
Q Now are you saying you were asked by the Republican National Committee to recruit a candidate to run against Congressman Holden?
A No, I'm saying I was asked by the National Republican Congressional Committee to find a candidate to run against Congressman Holden, a good candidate, quote, unquote. Which good is defined as someone who potentially can win.
Q And you were talking about a survey that was done.
A Yes, the congressional committee did a survey with public opinion strategies of Congressman Holden's district and tested him against our district attorney. The district attorney had a tremendous amount of name ID positive, as all DA's generally do because they get a lot of positive press, and the DA was doing fine until we matched him up with Congressman Holden, and then it was quite frankly no contest at all. So the end of the story is that the DA decided not to run. They had to go hunt for a poor candidate who barely

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was able to get enough signatures to file and Congressman Holden went on to become reelected.
Q Okay. So again the -- are you saying that candidate recruitment and organization is a major factor?

A Yeah, I'm going to make one other point here, and that is that these -- the three suburban areas, the major three suburban areas, Delaware, Montgomery, Bucks have always had one seat out as a Democrat. Costmeyer represented Bucks. Edgar represented Delaware County for a very long time, a popular Democrat. Montgomery County was represented by Couglin. You know, we won --
Q Excuse me, Coglin, who is Coglin and --
A Couglin. He preceded Representative Mezvinsky, M-e-z-v-i-n-s-k-y.
Q All right, and Mr. Coglin and --
A Couglin.
Q -- Couglin and Representative Mezvinsky were of what party?
A Congressman Couglin was Republican and Congresswoman Mezvinsky was a Democrat.
Q So within Montgomery County there have been switches of which party held the seat. Correct?
A Yes, that's right, as is typical of the southeast. It flips back and forth depending on the candidate.
Q And you referred to Congressman Edgar in Delaware

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County?
A That's correct.
Q And who holds his seat?
A That's Congressman Weldon's seat now.
Q That's the 7th congressional district under Act 1?
A That's correct.
Q Is Congressman Weldon safe in his seat at the moment?
A At the moment he is, but I believe as soon as that's an open seat, it will once again be highly contested, and I believe potentially up for grabs.

Q How important is incumbency in determining the safeness of a seat?
A I'm trying to think. During my time in the state house and at the state party I'm sorry to say I never defeated an incumbent. We lost two incumbents, if you consider the representative district to be an incumbent. We also lost Colley Gean, who was in the 149th district in Montgomery County, Philadelphia main line, and that is again another good example of a wonderful person, conservative, prolife Catholic in a seat that does not support a conservative prolife Catholic, and she survived one term and was defeated by Connie Williams. So time and time again the point is that candidate recruitment is very important in making sure that you retain an open seat.
Q Now let's look at the 10th congressional district.

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Let's switch from the southeast up to the northeast, the 10th, is that a safe Republican seat?
A Well, it's I believe safer for Congressman Sherwood than it was, but I think if it was open, it certainly would be potentially at risk.
Q Did Congressman Sherwood have a tough fight in his last campaign?
A Yeah, he had two tough fights. He had a tough fight in his last campaign against Pat Casey, and he had a tough fight the time before that against Pat Casey.
Q Now the 11th congressional district, whose district is that?
A Congressman Kanjorski.
Q Is that a safe district for him?
A As a sitting incumbent, yes, I believe it is.
Q If he vacated that seat, would it be a safe Democratic

seat?
A It would be a difficult seat to win for a Republican. However, there is a great influx in Monroe County, which is Republican, increasingly Republican county, and certainly you attempt to recruit the very best candidate you could recruit or attempt to recruit.
Q While we're on the subject of northeast Pennsylvania, do you happen to know which counties in Pennsylvania gained the most population over the last decade?

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A On a percentage basis Pike and Monroe.
Q Pike being in the new 10th congressional district and Monroe in the 11th?
A That's correct.
Q Do you know approximately what percentage of growth they had?
A Pike is very large. I know it's double digit. I think it could be close to 15 percent, but I'm absolutely not positive.
Q Now let's move across the state to the northwest and the 3rd congressional district. Who is the incumbent there?
A Congressman English.
Q Republican?
A Yes.
Q Is it a safe seat in your opinion for him to win reelection?
A Yes, it is.
Q If he leaves, will it be a safe Republican seat?
A I firmly believe that that would be vigorously contested by the Democrats.
Q Why do you believe that?
A Well, there is no safe seat that has Erie in it. There

is no safe seat in Pennsylvania for the Republicans, open seat, to just assume they're going to walk in aside from the three urban seats and --

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Q Urban seats?
A Three urban seats.
Q Are those safe? You don't mean those are safe for Republicans, do you?
A No, they are safe for Democrats.
Q I see. So you're saying the 1st, 2nd, and 14th congressional districts are safe for Democrats?
A Yes, they would be. It would be -- it would be fruitless for the Republicans to contest those even if they were.
Q All right, but as to every other district in Pennsylvania under Act 1 besides the 1st, 2nd and 14th, if the seats are open, do you think it's a sure bet for either side?
A Yeah, and I believe that both parties would allocate resources to pick those seats up.
Q Would it be worth doing it for both parties?
A Yes, I think that there is an opportunity there.
Q Now when you are managing a campaign or advising a candidate on whether or not a seat is worth going after, what factors do you look at?
A If you came to us and you were interested in seeking a post in whatever body you are running for, we first look at your own bio, what your background is. I would ask you a few very specific questions about why you were running. We take

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a look at where you are geographically in the region, in the district, and what you bring to the table, whether you bring any base vote with you, any prior post that you might currently hold. We'd look at the opponent. I would order the vote history for the district and review that to make some determination what the possible model might be for a turnout model.
Q What vote history would you look at?
A Well, what we do if you were running for the state senate, I would look for the vote history in that district for the last four like elections, in other words, the last four state senate elections, the last three elections right straight up, and then I would see where the Republicans were coming from, what ward the Democrats were coming from, what the total household count might be, what the median age of the likely voter would be, which the vote history will tell us, what percentage of female will be out, what percentage of male would be out, so that we can tailor a message based on -- not a message but rather a budget, a voter contact budget, based on the counts that will be in an immediate race. Then we may or may not choose to commission a benchmark poll to see what local issue may be present, how other local elected officials may play in that area, what your name awareness might be, what your opponent's might be and then we ask one verbatim questions that are open-ended questions as to what

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the local issues might be that you are interested in, et cetera. And then we take a look at the results to better understand where your beliefs might match with the district's and what issue we might want to run on in various segmented

parts of the district.
Q Do you make judgments on a candidate-by-candidate, district-by-district basis as to all these factors?
A Yeah, nothing is the same. There is no campaign that is the same as the next campaign. I have never had one. There are some mechanical features on male polling, TV, et cetera that are similar in timing, but the messages are always different, and the issues vary from race to race. And they're dictated by as much your own candidate as the opponent.
Q Now at the congressional level in your opinion is it worthwhile to look at state legislative districts that are wholly or partially nested within a congressional district?
A They help you determine what way the vote has gone within that district in the past.
Q Would you use state house district?
A Yeah, I may, I may use state house district, but I may use state senate district, it depends how the district breaks geographically. If you want to use, um, the 6th as an example, clearly the Montgomery County segment is a stand alone segment, and if I were going to poll that, I would poll

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that separately, and it might not be a separate message that might play there. It might require two messages depending on the territory of Lower Merion, but many times districts seem to naturally break along state house lines. They're about roughly depending on the geographically six -- as many as six state house districts sometimes and as many as two and a half or so state senate seats that we're dealing with on a congressional basis.
Q Now when you step back and look at Act 1 as a whole, can you draw any conclusions about its fundamental

characteristics?
A Well, I made a statement in an earlier deposition that I believe that it protects the incumbents who are not paired, and I still believe that, that the incumbents that are not paired are largely protected.
Q Now when you look at the order between the 8th and the 13th districts under Act 1, do you see anything based on your experience that looks to you like cracking of Democratic votes?
A The 8th and the 13th?
Q Yes.
A And I'm reflecting back on earlier testimony, and I believe cracking is splitting a Democrat vote area in two. Is that correct?
Q Something like that. If you don't understand the

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terms, that's fine.
A Well, okay. I don't see it the way I understand the term in either the 8th or the 13th district.
MR. KRILL: All right. I have no further questions.
JUDGE NYGAARD: Cross examine.

CROSS EXAMINATION

BY MR. SMITH:
Q Mr. Hallowell, I want to be clear on exactly where it is you agree and disagree with Mr. Ceisler. He said, as you'll recall, that he thought that the outcome of the new math would be either 13 to 6 in favor of the Republicans or 14 to 5. Do you recall that testimony?
A Yes, I believe I do.
Q Now your testimony is I believe that of the 11 Republican incumbents, 10 will win relatively easily. Is

that right?
A Yeah, I believe my deposition is 10, 6 and 3, if I recall correctly.
Q I'm asking you now about the Republicans. You believe 10 of the 11 incumbents will win easily?
A Ten Republicans, that's correct.
Q And among them you talked a little bit about Representative Hart in district 4 in the western part of the state. Her district actually is substantially more

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Republican than it was before, is it not?
A Yes, I suppose it does.
Q And Mr. Sherwood in district 10, his district becomes substantially more Republican as well?
A Yes.
Q Now in addition to those 10 districts that would be won by Republican incumbents, you also now believe that district 18 will be won by a Republican?
A Well, apparently that's correct. That's a change since February 20 when I was opposed. Inexplicably the Democrats seem to be giving that seat away.
Q When you were deposed, you testified that Mr. Mascara would lose to Mr. Murphy, did you not?
A Narrowly I thought that, but if you'll see I believe I also said that I thought it was going to be a toss up, but the narrow edge going to Mr. Murphy.
Q In fact you said Mr. Mascara would lose in a close race, did you not?
A I'd have to consult my deposition.
Q Referring then to page 99 of your deposition, Mr. Hallowell, the question starting at line 21 was: Just so the record is clear, it's correct that factoring everything in

you think that Senator Murphy would defeat Congressman Mascara? Answer: Yes, that's correct, but I think it would be a close election if it were to occur. Were you asked that

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question and --
A Yes, that's correct.
Q So we have the 10 Republican incumbents who will win district 18 there or 11 --
A Right. Right.
Q Of the 10 Democratic incumbents you're predicting that sxi will win. Is that right?
A That's right.
Q Either Mr. Murphy or Mr. Mascara in district 12?
A I got lost. Would you back up again please.
Q There are 10 Democratic incumbents now?
A Yes.
Q And you're predicting that six will win?
A That's correct.
Q That's either Mr. Murphy or Mr. Mascara in district 12. Mr. Hoeffel district 13. Mr. Brady and Mr. Fattah in the two Philadelphia districts. Mr. Kanjorski in district -- will that still be in district 11? Is that correct?
A I'm sorry?
Q What district is Mr. Kanjorski in?
A Eleven.
Q And Mr. Doyle in Pittsburgh. Is that right?
A That's correct.
Q So when you say that it's a map that protect incumbents who aren't paired, it's incumbents who aren't paired or Mr.

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Mascara, I take it?
A Well, no, if you consult my deposition, you'll see that I believe I said that I felt Mr. Murphy was going to win.
Q Yes, but --
A I still believe that.
Q He wasn't paired in that, was he?
A No, he was not.
Q In any event, that leaves ii Republican victories that you are predicting, 6 Democratic victories that you are predicting and the final two districts are district 17. First of all, that's the district in which Mr. Gekas has been paired with Mr. Holden, and your view is that that is a toss up with the small edge going to Mr. Gekas. Is that correct?
A That's correct.
Q That's because most of the people in that district are former constituents of Mr. Gekas. Is that right?
A Yes, that's correct.
Q That's a district that Mr. Bush won or Mr. Gore by about 14 percent?
A It could be, I don't have the figures in front of me.
Q That's correct, he was about where he came out in that area of the state?
A What were the numbers again?
Q Fourteen percent victory by Bush over Gore.
A Possibly.

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Q Okay. Then the final district is the open seat district 6, and I don't believe today you gave us testimony about how you think that district will come out. Do you have a position?

A I wasn't asked.
Q Do you have a position on that?
A Yes. Yes, I do. I think that's a toss up as well.
Q So your position is, to sum it up, that there are 11 Republican victories and you're predicting 6 Democratic victories and 2 toss ups if you count Mr. Gekas as a toss up and district 6 as a toss up. Is that correct?
A That's correct, with the understanding that the 18th seems to be an inexplicable win for us.
Q What happened was Mr. Mascara decided to move to district 12 or not according to your prediction. Is that right?
A I can't hear you, I'm sorry.
Q It would have happened whether Mr. Mascara moved into district 12 to run again Mr. Murtha or not because your prediction was that he would lose to Senator Murphy in any event. Is that correct?
A Yes, that's correct.
Q Is that a yes?
A Narrowly, yes.
Q Let me ask you about the two toss up districts. You

don't have any doubt, do you, that the people that drew this map intended to draw a district in which Mr. Gekas would beat Mr. Holden, do you?
MR. KRILL: Objection, lack of foundation, beyond the scope.
JUDGE NYGAARD: No, I'll let him answer.
A Can I have the question again please.
BY MR. SMITH:
Q You don't have any doubt that the people who drew the map intended to draw the district in which Mr. Gekas could

beat Mr. Holden, do you?
A I don't know what the intent of the people were that drew the map, so I really can't answer that.
Q So your supposition is that the people that drew this map put a Republican incumbent in and the Democratic incumbent in without making any effort to make the vote a Republican seat?
A Apparently.
Q And you don't have any information then about what the intent was of the people who drew the open district 6. Is that it?
A No, I was not involved in drawing the map.
Q You can't give us any explanation about why district 6 goes from the middle of the City of Reading, down in Chester County, then has a tongue that moves all the way down into

Lower Merion, why they decided to draw it that way?
A No, I have no I idea why the map was constructed. I can only testify that I think it's a toss up.
Q Do you think Senator Gerlach will be the Republican nominee?
A Yes, I do.
Q I wanted to ask you just one question, I believe you mentioned something about rivers in district 12 in the western part of the state. Is it your testimony that that's the natural kind of districting position that they came upon because they had rivers involved?
A No, it was my -- I believe my testimony that I was asked what the rivers indicated to me, and I said that they represented where steel mills, coal and that sort of thing had been in that region in the past.
Q Let me just ask you now about your testimony about this

little piece of district 8 that comes down into district 13. You said there has always been a piece of district 8 that comes into Montgomery County in the past. Is that correct?
A Yes.
Q Has there ever been a piece that comes almost to the point that virtually touches the City of Philadelphia down here? (Indicating.)
A No, to the best of my knowledge it stopped previously right along this road. (Indicating.)

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Q The previous piece was Horsham Township?
A Well, that's right, it's Horsham Township, and previous to that it was Upper Moreland and a part of Lower Moreland, and then prior to that it was all a portion of Hatboro, Upper Moreland and Lower Moreland. So it was either an entire long box, a short rectangle or part of all of those things.
Q And the particular piece that has been denigrated as the "Greenwood gash" is only few hundred yards wide at the north end here. Is that right?
A No, it looks likes it's a only few yards wide, but if you were there on the county run road, it's much larger then.
Q Actually I asked you a hundred yards wide?
A I think it may be even further than that.
Q In any event, it's true, is it not, that this particular little piece that has been carved out here is the most Democratic area in that part of the county?
A No, if I were going to remove Democrats from Montgomery County to the 13th district in a long gash, if I want to use, continue to use the word gash, I would have had the map drawers come across just a little further up and go across in either Plymouth Township or grab Norristown quite frankly.
Q Well, in fact they did grab Norristown, did they not,

and pull it into district 6 so it wouldn't be in district 13?
A I have to find it on the map.
Q This is Norristown right here. (Indicating.)

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A That's not legal. It says Montgomery Township. That is -- that is the Borough of Norristown.
Q Norristown has actually been pulled out of Montgomery County along with Lower Merion and put into this district that goes up into Berks County?
A That's true, yes, um-hum, but quite frankly I know those voters in Upper Dublin and Upper Moreland and that portion of Abington, and they don't have any particular tendency to vote Democrat.
Q Is there an African American community that lives in that part of the state?
A A very tiny portion and I believe it's further down the edge of that particular map. It's called Crestmont.
Q Just one final area of inquiry. In making your assessment of how districts are going to function, you don't put much stock, do you, in registration figures, registration of how many Democrats and how many Republicans are registered in particular districts?
A I put some weight to it but not a great deal, no.
Q And the reason for that is --
A Well, because time and time again we have proven that with an aggressive campaign voting behavior can be altered beyond registration percentages.
Q And in fact there are many parts of the state where voting behaviors typically depart from registration. Isn't

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that right?
A That's correct, that's why I testified that there are no safe seats in Pennsylvania aside from three urban ones.
MR. SMITH: Nothing further, Your Honors.
JUDGE NYGAARD: Thank you. Do you have any redirect?
MR. KRILL: Yes, thank you, Your Honors.

REDIRECT EXAMINATION

BY MR. KRILL:
Q On the issue of registration, voter registration, Mr. Hallowell, in your experience do legislators place emphasis on voter registration numbers in their districts?
A More so than I do, yes, that's correct.
Q DO voter registration numbers have an impact on candidate recruitment efforts?
A Yes. Yes, they do. They become a very -- they're a big mental point I think time and time again, and I guess let me start on candidate recruitment or targeting seats. I have had many heated conversations with members of house Republican leadership and state party leadership on, "Well, we don't need to worry about such and such a seat because it's a 70 percent Republican seat." And the answer is, "Yes, we do have to worry about it because there are no safe seats in Pennsylvania. We can't take anything for granted." Likewise we had conversations with regard to targeting seats

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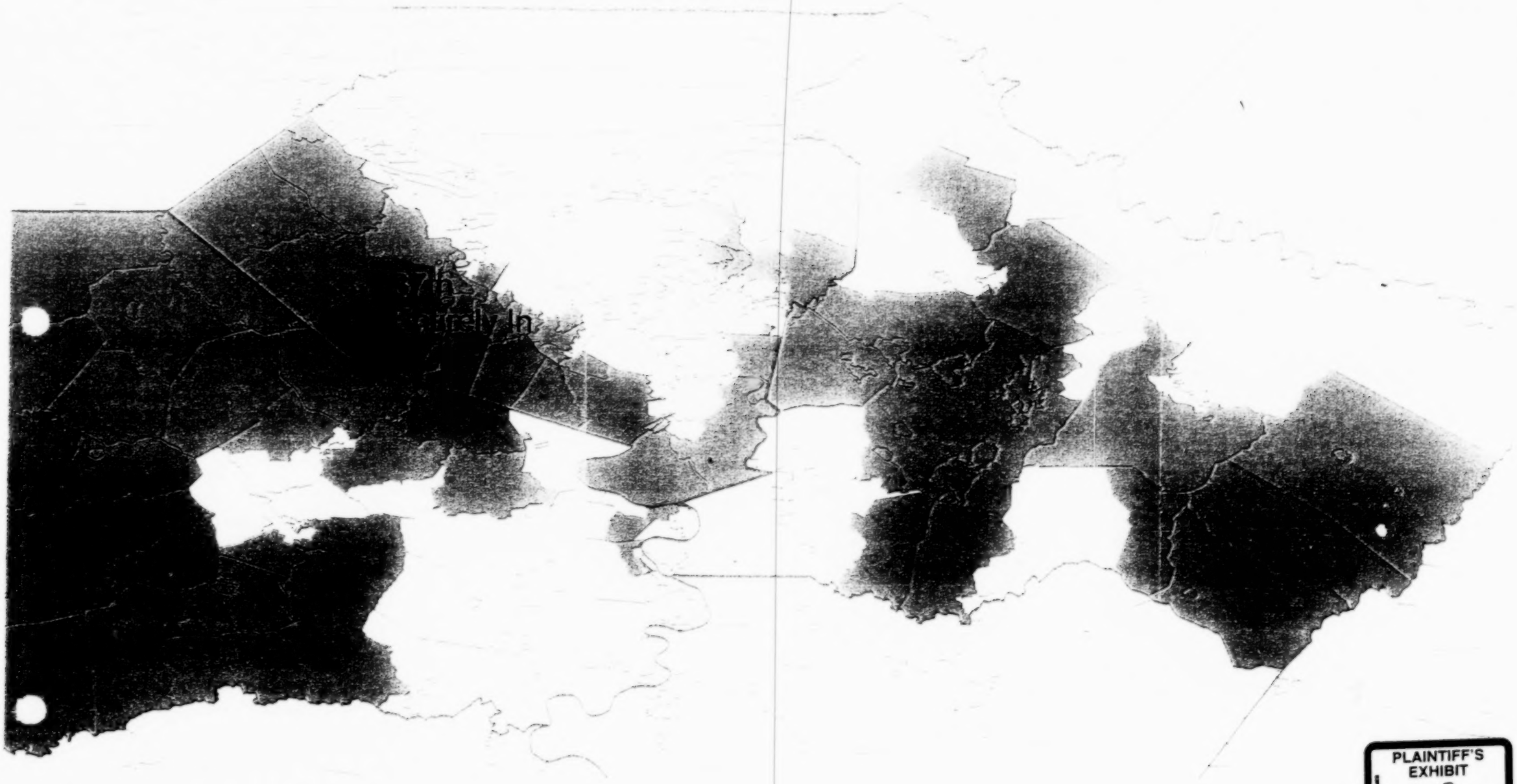
that we shouldn't be in a seat that's a 35 or a 36 or a 37 percent registered Republican seat because we can't win that because there just aren't enough Republicans in it, and we have proven that wrong in Pennsylvania.

Q But you're saying despite that in the minds of legislators voter registration numbers in their districts are still important?
A It's comforting to know, that's the way I view it.
MR. KRILL: No further questions.
JUDGE NYGAARD: Any -- no further questions. Any questions from the Court?
(No audible response.)
JUDGE NYGAARD: Okay, you may step down. Thank you.
THE WITNESS: Thank you.

* * * *

Murphy (37th) Senate District in the 18th Congressional



PLAINTIFF'S
EXHIBIT
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TABLE 1
INCUMBENT PAIRING & PARTY STRENGTH. 1992 PLAN & CONFERENCE PLAN COMPARED

1992 PLAN	INCUMBENT	% DEM 1991-2000	REP OR DEM DIST	CONF PLAN	INCUMBENT	% DEM 1991-2000	REP OR DEM DIST	CHANGE IN % DEM
DIST 1	BRADY (D)	79.7%	DEM	DIST 1	BRADY (D)	77.3%	DEM	-2.4%
DIST 2	FATTAH (D)	83.0%	DEM	DIST 2	FATTAH (D)	81.7%	DEM	-1.3%
DIST 3	BORSKI (D)	59.5%	DEM	DIST 13	BORSKI (D) HOEFFEL (D)	48.9%	REP	-10.6%
DIST 4	HART (R)	52.0%	DEM	DIST 4	HART (R)	48.6%	REP	-3.4%
DIST 5	PETERSON (R)	41.2%	REP	DIST 5	PETERSON (R)	42.1%	REP	+0.9%
DIST 6	HOLDEN (D)	44.0%	REP	DIST 17	HOLDEN (D) GEKAS (R)	41.7%	REP	-2.3%
DIST 7	WELDON (R)	42.9%	REP	DIST 7	WELDON (R)	43.1%	REP	+0.2%
DIST 8	GREENWOOD (R)	45.6%	REP	DIST 8	GREENWOOD (R)	46.0%	REP	+0.4%
DIST 9	SHUSTER (R)	37.7%	REP	DIST 9	SHUSTER (R)	39.9%	REP	+2.2%
DIST 10	SHERWOOD (R)	46.1%	REP	DIST 10	SHERWOOD (R)	41.5%	REP	-4.6%
DIST 11	KANJORSKI (D)	50.9%	DEM	DIST 11	KANJORSKI (D)	53.5%	DEM	+2.6%
DIST 12	MURTHA (D)	51.9%	DEM	DIST 12	MURTHA (D)	59.5%	DEM	+7.6%
DIST 13	HOEFFEL (D)	46.9%	REP	DIST 13	HOEFFEL (D) BORSKI (D)	48.9%	REP	+2.0%
DIST 14	COYNE (D)	60.0%	DEM	DIST 14	COYNE (D) DOYLE (D)	66.1%	DEM	+6.1%
DIST 15	TOOMEY (R)	47.5%	REP	DIST 15	TOOMEY (R)	47.0%	REP	-0.5%
DIST 16	PITTS (R)	36.5%	REP	DIST 16	PITTS (R)	34.6%	REP	-1.9%
DIST 17	GEKAS (R)	36.9%	REP	DIST 17	GEKAS (R) HOLDEN (D)	41.7%	REP	+4.8%
DIST 18	DOYLE (D)	53.9%	DEM	DIST 14	DOYLE (D) COYNE (D)	66.1%	DEM	+12.2%
DIST 19	PLATTS (R)	38.2%	REP	DIST 19	PLATTS (R)	38.0%	REP	-0.2%
DIST 20	MASCARA (D)	54.4%	DEM	DIST 18	MASCARA (D)	46.8%	REP	-7.6%
DIST 21	ENGLISH (R)	47.7%	REP	DIST 3	ENGLISH (R)	46.4%	REP	-1.3%
				DIST 6	OPEN	44.5%	REP	
SUM		**50.3%**	**12 REP 9 DEM**			**49.8%**	**14 REP 5 DEM**	

TABLE 2

INCUMBENT PAIRING & PARTY STRENGTH, 1992 PLAN & ALTERNATIVE 2 PLAN COMPARED

1992 PLAN	INCUMBENT	% DEM 1991-2000	REP OR DEM DIST	ALT 2 PLAN	INCUMBENT	% DEM 1991-2000	REP OR DEM DIST	CHANGE IN % DEM
DIST 1	BRADY (D)	79.7%	DEM	DIST 1	BRADY (D)	76.8%	DEM	-2.9%
DIST 2	FATTAH (D)	83.0%	DEM	DIST 2	FATTAH (D)	81.8%	DEM	-1.2%
DIST 3	BORSKI (D)	59.5%	DEM	DIST 3	BORSKI (D)	54.3%	DEM	-5.2%
DIST 4	HART (R)	52.0%	DEM	DIST 4	HART (R)	44.3%	REP	-7.7%
DIST 5	PETERSON (R)	41.2%	REP	DIST 5	PETERSON (R)	42.5%	REP	+1.3%
DIST 6	HOLDEN (D)	44.0%	REP	DIST 6	HOLDEN (D)	44.7%	REP	+0.7%
DIST 7	WELDON (R)	42.9%	REP	DIST 7	WELDON (R)	40.7%	REP	-2.2%
DIST 8	GREENWOOD (R)	45.6%	REP	DIST 8	GREENWOOD (R)	39.0%	REP	-6.6%
DIST 9	SHUSTER (R)	37.7%	REP	DIST 19	SHUSTER (R) PLATTS (R)	38.0%	REP	+0.3%
DIST 10	SHERWOOD (R)	46.1%	REP	DIST 10	SHERWOOD (R)	37.6%	REP	-8.5%
DIST 11	KANJORSKI (D)	50.9%	DEM	DIST 11	KANJORSKI (D)	53.8%	DEM	+2.9%
DIST 12	MURTHA (D)	51.9%	DEM	DIST 12	MURTHA (D)	53.8%	DEM	+1.9%
DIST 13	HOEFFEL (D)	46.9%	REP	DIST 13	HOEFFEL (D)	46.3%	REP	-0.6%
DIST 14	COYNE (D)	60.0%	DEM	DIST 18	COYNE (D) DOYLE (D)	61.7%	DEM	+1.7%
DIST 15	TOOMEY (R)	47.5%	REP	DIST 15	TOOMEY (R)	47.7%	REP	+0.2%
DIST 16	PITTS (R)	36.5%	REP	DIST 16	PITTS (R)	34.3%	REP	-2.2%
DIST 17	GEKAS (R)	36.9%	REP	DIST 17	GEKAS (R)	39.7%	REP	+2.8%
DIST 18	DOYLE (D)	53.9%	DEM	DIST 18	DOYLE (D) COYNE (D)	61.7%	DEM	+7.8%
DIST 19	PLATTS (R)	38.2%	REP	DIST 19	PLATTS (R) SHUSTER (R)	38.0%	REP	-0.2%
DIST 20	MASCARA (D)	54.4%	DEM	DIST 14	MASCARA (D)	60.3%	DEM	+5.9%
DIST 21	ENGLISH (R)	47.7%	REP	DIST 9	ENGLISH (R)	49.2%	REP	+1.5%
SUM		**50.3%**	**12 REP 9 DEM**			**49.8%**	**12 REP 7 DEM**	

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TABLE 3
INCUMBENT PAIRING & PARTY STRENGTH. 1992 PLAN & ALTERNATIVE 3 PLAN COMPARED

1992 PLAN	INCUMBENT	% DEM 1991-2000	REP OR DEM DIST	ALT 3 PLAN	INCUMBENT	% DEM 1991-2000	REP OR DEM DIST	CHANGE IN % DEM
DIST 1	BRADY (D)	79.7%	DEM	DIST 1	BRADY (D)	73.7%	DEM	-6.0%
DIST 2	FATTAH (D)	83.0%	DEM	DIST 2	FATTAH (D)	81.5%	DEM	-1.5%
DIST 3	BORSKI (D)	59.5%	DEM	DIST 3	BORSKI (D)	56.8%	DEM	-2.7%
DIST 4	HART (R)	52.0%	DEM	DIST 4	HART (R)	45.6%	REP	-6.4%
DIST 5	PETERSON (R)	41.2%	REP	DIST 5	PETERSON (R)	41.2%	REP	0.0%
DIST 6	HOLDEN (D)	44.0%	REP	DIST 6	HOLDEN (D)	44.5%	REP	+0.5%
DIST 7	WELDON (R)	42.9%	REP	DIST 7	WELDON (R)	42.1%	REP	-0.8%
DIST 8	GREENWOOD (R)	45.6%	REP	DIST 8	GREENWOOD (R)	42.2%	REP	-3.4%
DIST 9	SHUSTER (R)	37.7%	REP	DIST 9	SHUSTER (R)	38.9%	REP	+1.2%
DIST 10	SHERWOOD (R)	46.1%	REP	DIST 10	TOOMEY (R) SHERWOOD (R)	45.9%	REP	-0.2%
DIST 11	KANJORSKI (D)	50.9%	DEM	DIST 11	KANJORSKI (D)	53.7%	DEM	+2.8%
DIST 12	MURTHA (D)	51.9%	DEM	DIST 12	MURTHA (D)	53.9%	DEM	+2.0%
DIST 13	HOEFFEL (D)	46.9%	REP	DIST 13	HOEFFEL (D)	45.5%	REP	-1.4%
DIST 14	COYNE (D)	60.0%	DEM	DIST 18	COYNE (D) DOYLE (D)	64.4%	DEM	+4.4%
DIST 15	TOOMEY (R)	47.5%	REP	DIST 10	TOOMEY (R) SHERWOOD (R)	45.9%	REP	-1.6%
DIST 16	PITTS (R)	36.5%	REP	DIST 16	PITTS (R)	34.5%	REP	-2.0%
DIST 17	GEKAS (R)	36.9%	REP	DIST 17	GEKAS (R)	37.9%	REP	+1.0%
DIST 18	DOYLE (D)	53.9%	DEM	DIST 18	DOYLE (D) COYNE (D)	64.4%	DEM	+10.5%
DIST 19	PLATTS (R)	38.2%	REP	DIST 19	PLATTS (R)	37.9%	REP	-0.3%
DIST 20	MASCARA (D)	54.4%	DEM	DIST 15	MASCARA (D)	56.7%	DEM	+2.3%
DIST 21	ENGLISH (R)	47.7%	REP	DIST 14	ENGLISH (R)	48.4%	REP	+0.7%
SUM		**50.3%**	**12 REP 9 DEM**			**49.8%**	**12 REP 7 DEM**	

TABLE 4
INCUMBENT PAIRING & PARTY STRENGTH, 1992 PLAN & ALTERNATIVE 4 PLAN COMPARED

1992 PLAN	INCUMBENT	% DEM 1991-2000	REP OR DEM DIST	ALT 4 PLAN	INCUMBENT	% DEM 1991-2000	REP OR DEM DIST	CHANGE IN % DEM
DIST 1	BRADY (D)	79.7%	DEM	DIST 1	BRADY (D)	75.8%	DEM	-3.9%
DIST 2	FATTAH (D)	83.0%	DEM	DIST 2	FATTAH (D)	82.1%	DEM	-0.9%
DIST 3	BORSKI (D)	59.5%	DEM	DIST 3	BORSKI (D)	55.0%	DEM	-4.5%
DIST 4	HART (R)	52.0%	DEM	DIST 4	HART (R)	45.1%	REP	-6.9%
DIST 5	PETERSON (R)	41.2%	REP	DIST 5	PETERSON (R)	42.5%	REP	+1.3%
DIST 6	HOLDEN (D)	44.0%	REP	DIST 6	HOLDEN (D)	44.6%	REP	+0.6%
DIST 7	WELDON (R)	42.9%	REP	DIST 7	WELDON (R)	40.8%	REP	-2.1%
DIST 8	GREENWOOD (R)	45.6%	REP	DIST 8	GREENWOOD (R)	39.4%	REP	-6.2%
DIST 9	SHUSTER (R)	37.7%	REP	DIST 19	SHUSTER (R) PLATTS (R)	38.1%	REP	+0.4%
DIST 10	SHERWOOD (R)	46.1%	REP	DIST 10	SHERWOOD (R)	37.9%	REP	-8.2%
DIST 11	KANJORSKI (D)	50.9%	DEM	DIST 11	KANJORSKI (D)	53.7%	DEM	+2.8%
DIST 12	MURTHA (D)	51.9%	DEM	DIST 12	MURTHA (D)	52.7%	DEM	+0.8%
DIST 13	HOEFFEL (D)	46.9%	REP	DIST 13	HOEFFEL (D)	46.0%	REP	-0.9%
DIST 14	COYNE (D)	60.0%	DEM	DIST 18	COYNE (D) DOYLE (D)	65.1%	DEM	+5.1%
DIST 15	TOOMEY (R)	47.5%	REP	DIST 15	TOOMEY (R)	47.7%	REP	+0.2%
DIST 16	PITTS (R)	36.5%	REP	DIST 16	PITTS (R)	34.4%	REP	-2.1%
DIST 17	GEKAS (R)	36.9%	REP	DIST 17	GEKAS (R)	39.5%	REP	-2.6%
DIST 18	DOYLE (D)	53.9%	DEM	DIST 18	DOYLE (D) COYNE (D)	65.1%	DEM	+11.2%
DIST 19	PLATTS (R)	38.2%	REP	DIST 19	PLATTS (R) SHUSTER (R)	38.1%	REP	-0.1%
DIST 20	MASCARA (D)	54.4%	DEM	DIST 14	MASCARA (D)	56.7%	DEM	-2.3%
DIST 21	ENGLISH (R)	47.7%	REP	DIST 9	ENGLISH (R)	49.7%	REP	-2.0%
SUM		**50.3%**	**12 REP 9 DEM**			**49.8%**	**12 REP 7 DEM**	

TABLE 5
SUMMARY OF TABLES 1-4: REPUBLICAN AND DEMOCRATIC DISTRICTS & PAIRINGS IN EACH PLAN

	MEAN % DEM	MEAN % REP	# OF DEM DISTRICTS	% OF DISTRICTS	# OF REP DISTRICTS	% OF REP DISTRICTS	PAIRINGS
1992 PLAN	50.3%	49.7%	9	43%	12	57%	NA
CONF PLAN	49.8%	50.2%	5	26%	14	74%	2 D/DIST 13 2D/DIST 14 1D,1R/DIST 17*
ALT 2 PLAN	49.8%	50.2%	7	37%	12	63%	2D/DIST 18 2R/DIST 19
ALT 3 PLAN	49.8%	50.2%	7	37%	12	63%	2D/DIST 18 2R/DIST 10
ALT 4 PLAN	49.8%	50.2%	7	37%	12	63%	2D/DIST 18 2R/DIST 19

* DISTRICT 17 IS A HEAVILY REPUBLICAN LEANING DISTRICT

TABLE 6
COMPARISON OF PLANS ON COMPACTNESS, DISPERSION & PERIMETER MEASURES

DIST	1992 PLAN		CONF PLAN		ALT 2 PLAN		ALT 3 PLAN		ALT 4 PLAN	
	DISP	PERI	DISP	PERI	DISP	PERI	DISP	PERI	DISP	PERI
1	.167	.092	.140	.068	.149	.065	.166	.084	.165	.094
2	.433	.178	.432	.165	.434	.170	.476	.274	.486	.225
3	.307	.302	.410	.142	.340	.286	.244	.256	.269	.248
4	.270	.207	.301	.252	.402	.136	.392	.176	.396	.115
5	.322	.237	.381	.227	.400	.173	.237	.205	.400	.173
6	.275	.213	.338	.090	.409	.360	.355	.390	.418	.244
7	.426	.203	.507	.172	.172	.110	.529	.289	.186	.127
8	.343	.431	.340	.319	.317	.206	.252	.208	.290	.167
9	.428	.255	.271	.126	.404	.223	.268	.151	.329	.223
10	.318	.305	.315	.182	.284	.118	.332	.200	.274	.114
11	.306	.285	.283	.243	.347	.245	.393	.262	.340	.198
12	.461	.237	.218	.053	.363	.137	.406	.243	.349	.129
13	.317	.236	.187	.104	.386	.294	.275	.218	.455	.285
14	.461	.139	.312	.098	.402	.195	.392	.342	.456	.153
15	.360	.342	.332	.222	.437	.350	.421	.161	.263	.260
16	.495	.279	.332	.221	.370	.198	.374	.343	.382	.170
17	.358	.223	.313	.301	.376	.226	.280	.221	.490	.331
18	.538	.127	.228	.063	.340	.109	.458	.201	.294	.123
19	.312	.357	.321	.388	.196	.144	.385	.422	.193	.132
20	.414	.216								
21	.432	.275								
MIN	**.167**	**.092**	**.140**	**.053**	**.149**	**.065**	**.166**	**.084**	**.165**	**.094**
MEAN	**.369**	**.245**	**.314**	**.181**	**.344**	**.197**	**.349**	**.245**	**.339**	**.185**

TABLE 7
COMPARISON OF PLANS, COMPACTNESS MEASURES, COUNTY SPLITS, MUNICIPAL SPLITS, PRECINCT SPLITS, POPULATION DEVIATION

	1992 PLAN	RANK	CONF PLAN	RANK	ALT 2 PLAN	RANK	ALT 3 PLAN	RANK	ALT 4 PLAN	RANK
COMPACTNESS DISPERSION MEAN SCORE	.369	1	.314	5	.344	3	.349	2	.339	4
COMPACTNESS PERIMETER MEAN SCORE	.245	1.5	.181	5	.197	3	.245	1.5	.185	4
NUMBER OF COUNTY SPLITS	18	1	25	4.5	23	2.5	23	2.5	25	4.5
NUMBER OF MUNICIPAL SPLITS	13	1	65	5	18	2	21	3	42	4
NUMBER OF PRECINCT SPLITS	3	4	6	5	0	2	0	2	0	2
TOTAL POPULATION DEVIATION	57	5	19	3.5	15	2	19	3.5	1	1
MEAN RANK		**2.3**		**4.7**		**2.4**		**2.4**		**3.3**

TABLE 8
PERCENT OF PERSONS FROM 1992 DISTRICTS IN NEW DISTRICTS, BY PLAN & PARTY OF INCUMBENT

		REPUBLICAN INCUMBENTS PERCENT CONSTITUENTS RETAINED		DEMOCRATIC INCUMBENTS PERCENT CONSTITUENTS RETAINED
CONF PLAN		76%		51%
ALT 2 PLAN		54%		61%
ALT 3 PLAN		60%		66%
ALT 4 PLAN		55%		63%

TABLE 9
INTER-YEAR LINEAR CORRELATIONS BETWEEN % DEMOCRATIC IN STATEWIDE ELECTIONS FROM 1992 TO 2000 *

		MEAN % DEM00	MEAN % DEM98	MEAN % DEM96	MEAN % DEM94	MEAN % DEM92
MEAN % DEM00		1.0	.931	.966	.942	.924
MEAN % DEM98		.931	1.0	.936	.935	.934
MEAN % DEM96		.966	.936	1.0	.960	.937
MEAN % DEM94		.942	.935	.960	1.0	.942
MEAN % DEM92		.924	.934	.937	.942	1.0

* PRECINCT-LEVEL DATA

TABLE 10
LINEAR CORRELATIONS BETWEEN MEAN % DEMOCRATIC IN STATEWIDE ELECTIONS AND % DEMOCRATIC IN CONGRESSIONAL ELECTIONS, 1992-2000 *

	% DEM 1992 CONGRESS WITH MEAN % DEM 1992 STATEWIDE ELECTIONS	% DEM 1994 CONGRESS WITH MEAN % DEM 1994 STATEWIDE ELECTIONS	% DEM 1996 CONGRESS WITH MEAN % DEM 1996 STATEWIDE ELECTIONS	% DEM 1998 CONGRESS WITH MEAN % DEM 1998 STATEWIDE ELECTIONS	% DEM 2000 CONGRESS WITH MEAN % DEM 2000 STATEWIDE ELECTIONS
LINEAR CORRE-LATION COEFF.	.827	.857	.872	.854	.827

* UNCONTESTED ELECTIONS ELIMINATED; PRECINCT-LEVEL DATA

TABLE 11
PREDICTED CHANGE IN % DEMOCRAT IN CONGRESSIONAL ELECTIONS FOR A 1 % CHANGE IN MEAN % DEMOCRAT IN STATEWIDE ELECTIONS, 1992-2000 *

	% DEM 1992 CONGRESS WITH MEAN % DEM 1992 STATEWIDE ELECTIONS	% DEM 1994 CONGRESS WITH MEAN % DEM 1994 STATEWIDE ELECTIONS	% DEM 1996 CONGRESS WITH MEAN % DEM 1996 STATEWIDE ELECTIONS	% DEM 1998 CONGRESS WITH MEAN % DEM 1998 STATEWIDE ELECTIONS	% DEM 2000 CONGRESS WITH MEAN % DEM 2000 STATEWIDE ELECTIONS
PREDICTED CHANGE IN % DEM CONGRESS FOR 1% CHANGE IN MEAN % DEM STATEWIDE ELECTIONS	1.1%	.94%	1.1%	.98%	1.0%
STATIS-ICAL SIGNIF-CANCE	<.0001	<.0001	<.0001	<.0001	<.0001

* UNCONTESTED ELECTIONS ELIMINATED; PRECINCT-LEVEL DATA

TABLE 12
PERCENT OF PERSONS FROM 1992 DISTRICT IN NEW DISTRICTS, BY PLAN AND PARTY, INDIVIDUAL DISTRICTS, CONFERENCE PLAN

1992 PLAN	INCUMBENT	CONF PLAN	INCUMBENT	PERCENT CONSTITUENTS RETAINED
DIST 1	BRADY (D)	DIST 1	BRADY (D)	54.6%
DIST 2	FATTAH (D)	DIST 2	FATTAH (D)	64.4%
DIST 3	BORSKI (D)	DIST 13	BORSKI (D) HOEFFEL (D)	47.3%
DIST 4	HART (R)	DIST 4	HART (R)	68.1%
DIST 5	PETERSON (R)	DIST 5	PETERSON (R)	75.8%
DIST 6	HOLDEN (D)	DIST 17	HOLDEN (D) GEKAS (R)	39.1%
DIST 7	WELDON (R)	DIST 7	WELDON (R)	77.5%
DIST 8	GREENWOOD (R)	DIST 8	GREENWOOD (R)	92.5%
DIST 9	SHUSTER (R)	DIST 9	SHUSTER (R)	65.3%
DIST 10	SHERWOOD (R)	DIST 10	SHERWOOD (R)	60.4%
DIST 11	KANJORSKI (D)	DIST 11	KANJORSKI (D)	70.1%
DIST 12	MURTHA (D)	DIST 12	MURTHA (D)	49.1%
DIST 13	HOEFFEL (D)	DIST 13	HOEFFEL (D) BORSKI (D)	46.9%
DIST 14	COYNE (D)	DIST 14	COYNE (D) DOYLE (D)	60.7%
DIST 15	TOOMEY (R)	DIST 15	TOOMEY (R)	93.0%
DIST 16	PITTS (R)	DIST 16	PITTS (R)	67.4%
DIST 17	GEKAS (R)	DIST 17	GEKAS (R) HOLDEN (D)	60.4%
DIST 18	DOYLE (D)	DIST 14	DOYLE (D) COYNE (D)	38.4%
DIST 19	PLATTS (R)	DIST 19	PLATTS (R)	91.7%
DIST 20	MASCARA (D)	DIST 18	MASCARA (D)	44.1%
DIST 21	ENGLISH (R)	DIST 3	ENGLISH (R)	87.5%
		DIST 6	OPEN	
MEAN				**64%**
MEAN DEM INC				**51%**
MEAN REP INC				**76%**

U. S. Congressional Districts 2002 - Act 1 (2002) - Election Results

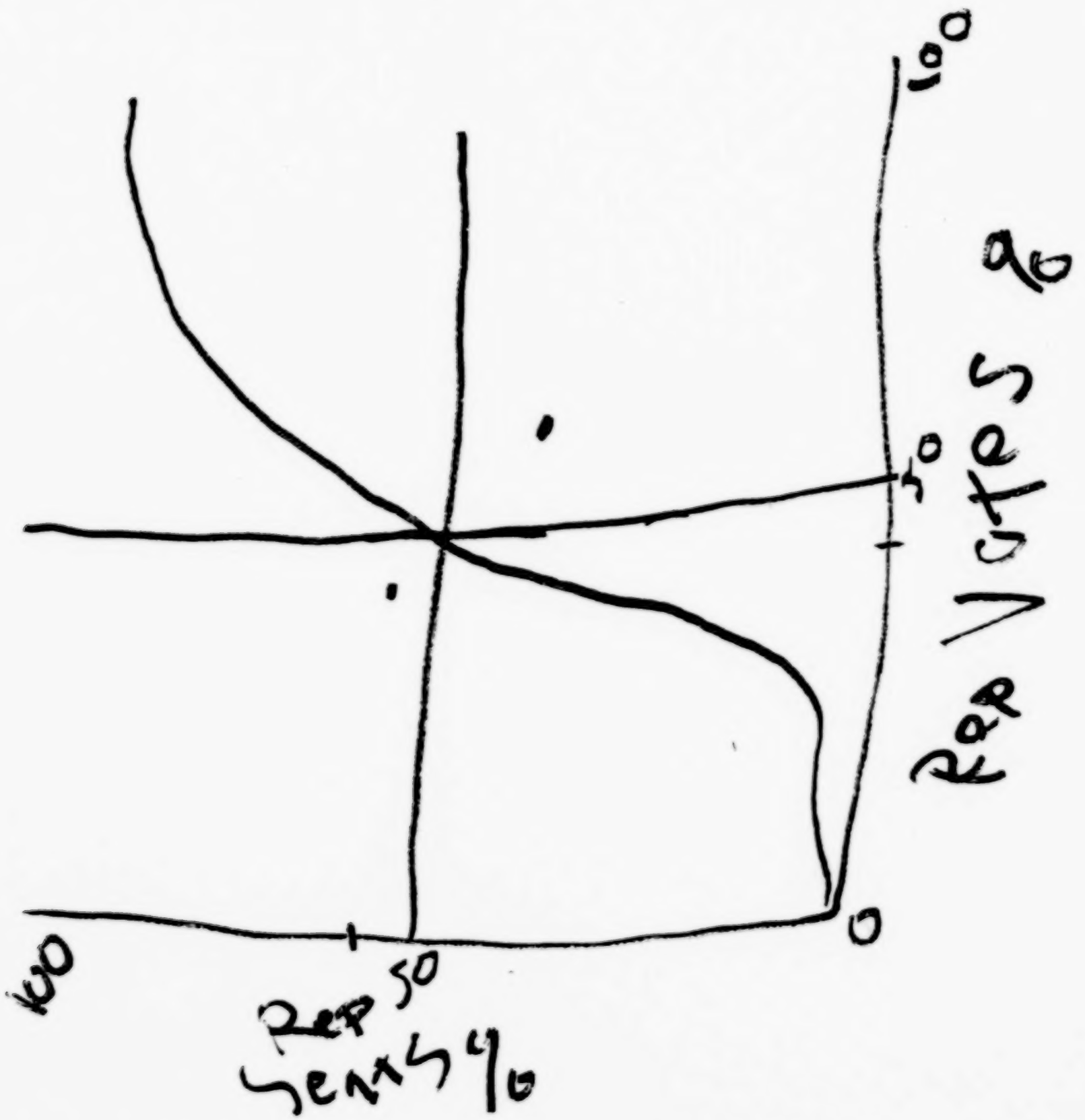
District	Dem_Str	President 2000			President 1996			Governor 1994			President 1992		
		Bush	Gore	Other	Dole	Clinton	Other	Ridge	Singel	Other	Bush	Clinton	Other
1	81.98%	31,717	182,154	4,055	28,921	167,499	13,261	39,148	108,122	10,621	51,225	173,368	26,920
2	85.75%	29,295	221,013	4,554	27,062	206,171	10,086	29,752	137,180	10,016	41,874	215,743	20,858
3	46.08%	128,404	117,241	8,623	99,249	112,943	28,086	124,480	51,940	28,834	91,402	112,745	55,695
4	47.59%	152,314	134,704	7,518	122,251	120,680	26,821	98,658	79,611	42,952	101,286	132,230	58,171
5	41.66%	137,675	89,122	8,040	102,219	90,344	30,310	98,810	57,144	25,748	98,602	88,144	54,517
6	45.37%	128,820	130,377	8,057	102,687	104,900	25,537	88,695	61,039	26,783	101,887	99,654	51,882
7	44.94%	141,774	151,267	8,870	119,507	126,392	31,141	109,493	68,912	35,659	133,273	120,262	56,806
8	46.92%	130,554	145,213	9,130	102,040	113,103	31,472	94,652	60,711	26,369	103,353	107,598	60,287
9	39.07%	149,317	80,116	5,596	110,029	80,791	25,473	90,318	58,969	28,968	103,957	78,768	44,467
10	42.67%	140,271	100,880	9,215	104,911	89,309	30,419	97,658	62,329	20,667	108,266	81,683	51,706
11	56.19%	101,451	127,241	9,665	79,027	112,550	28,788	73,025	81,468	18,895	87,542	106,174	47,244
12	59.40%	106,349	132,886	7,266	77,796	127,798	31,081	64,058	109,206	32,839	69,296	146,654	50,118
13	51.39%	117,806	156,203	7,482	96,132	128,290	27,914	95,429	78,074	30,706	108,887	127,744	52,116
14	67.38%	74,091	183,711	9,266	66,151	163,254	24,528	64,141	115,343	31,233	64,649	191,562	46,717
15	47.16%	116,612	119,296	9,117	91,172	99,922	26,851	83,791	58,672	17,309	85,852	95,119	51,126
16	34.79%	144,667	82,651	6,355	115,220	71,772	18,885	85,057	39,772	32,654	108,644	64,970	38,168
17	42.63%	139,499	103,922	7,761	109,736	94,982	26,858	93,034	66,260	33,566	111,313	86,094	50,603
18	45.68%	154,172	139,441	7,557	126,100	117,674	28,292	105,678	79,906	39,547	103,618	127,125	63,254
19	37.96%	153,693	90,045	7,531	117,551	84,625	22,106	89,523	54,242	33,627	110,090	78,199	46,319
	Tot:	**2,278,481**	**2,487,483**	**145,658**	**1,797,761**	**2,212,999**	**487,909**	**1,625,400**	**1,428,900**	**526,993**	**1,785,016**	**2,233,836**	**926,974**
	Offic'l Tot:	**2,281,127**	**2,485,967**		**1,801,169**	**2,215,819**		**1,627,976**	**1,430,099**		**1,791,841**	**2,239,164**	
	Variance fr. Offic'l:	**(2,646)**	**1,516**		**(3,408)**	**(2,820)**		**(2,576)**	**(1,199)**		**(6,825)**	**(5,328)**	
1		14.55%	83.59%	1.86%	13.79%	79.88%	6.32%	24.79%	68.48%	6.73%	20.37%	68.93%	10.70%
2		11.49%	86.72%	1.79%	11.12%	84.73%	4.15%	16.81%	77.53%	5.66%	15.04%	77.47%	7.49%
3		50.50%	46.11%	3.39%	41.31%	47.01%	11.69%	60.65%	25.31%	14.05%	35.18%	43.39%	21.43%
4		51.71%	45.73%	2.55%	45.32%	44.74%	9.94%	44.60%	35.99%	19.42%	34.72%	45.33%	19.94%
5		58.63%	37.95%	3.42%	45.86%	40.54%	13.60%	54.38%	31.45%	14.17%	40.87%	36.53%	22.60%
6		48.20%	48.78%	3.01%	44.05%	45.00%	10.95%	50.25%	34.58%	15.17%	40.20%	39.32%	20.47%
7		46.96%	50.10%	2.94%	43.14%	45.62%	11.24%	51.15%	32.19%	16.66%	42.94%	38.75%	18.30%
8		45.82%	50.97%	3.20%	41.38%	45.86%	12.76%	52.08%	33.41%	14.51%	38.10%	39.67%	22.23%
9		63.53%	34.09%	2.38%	50.87%	37.35%	11.78%	50.67%	33.08%	16.25%	45.76%	34.67%	19.57%
10		56.03%	40.29%	3.68%	46.70%	39.76%	13.54%	54.06%	34.50%	11.44%	44.80%	33.80%	21.40%
11		42.56%	53.38%	4.05%	35.86%	51.07%	13.06%	42.12%	46.99%	10.90%	36.33%	44.06%	19.61%
12		43.14%	53.91%	2.95%	32.87%	54.00%	13.13%	31.08%	52.99%	15.93%	26.04%	55.12%	18.84%
13		41.85%	55.49%	2.66%	38.10%	50.84%	11.06%	46.73%	38.23%	15.04%	37.71%	44.24%	18.05%
14		27.74%	68.79%	3.47%	26.05%	64.29%	9.66%	30.44%	54.74%	14.82%	21.34%	63.24%	15.42%
15		47.59%	48.69%	3.72%	41.83%	45.85%	12.32%	52.44%	36.72%	10.83%	36.99%	40.98%	22.03%
16		61.91%	35.37%	2.72%	55.97%	34.86%	9.17%	54.01%	25.25%	20.73%	51.30%	30.68%	18.02%
17		55.54%	41.37%	3.09%	47.39%	41.02%	11.60%	48.24%	34.36%	17.40%	44.88%	34.71%	20.40%
18		51.19%	46.30%	2.51%	46.35%	43.25%	10.40%	46.94%	35.49%	17.57%	35.24%	43.24%	21.52%
19		61.17%	35.84%	3.00%	52.41%	37.73%	9.86%	50.47%	30.58%	18.96%	46.93%	33.33%	19.74%

U. S. Congressional Districts 2002 - Act 1 (2002) - Election Results

District	Voter Registration 2000			US Senate 2000		Attorney Gen 2000		Auditor Gen 2000		Treasurer 2000	
	Republican	Democratic	Other	Santorum	Klink	Fisher	Eisenhowr	True	Casey	Hafer	Knoll
1	83,648	314,419	26,967	38,357	163,741	33,065	162,677	24,827	174,999	34,152	163,630
2	62,564	360,599	35,312	36,174	200,635	31,817	199,211	23,750	209,927	34,886	197,445
3	171,435	182,454	35,263	139,345	100,443	142,974	88,267	95,481	135,142	117,477	116,131
4	168,115	225,631	42,353	155,708	132,956	165,262	109,264	118,117	157,378	148,287	131,241
5	190,842	145,735	38,481	145,686	75,344	142,000	72,375	110,292	104,709	128,507	87,577
6	209,105	150,634	59,605	149,990	104,120	142,915	104,023	110,729	136,329	139,428	107,042
7	279,835	119,762	51,547	170,507	116,542	162,543	115,506	129,794	150,495	157,733	119,746
8	208,392	160,289	58,791	155,440	112,853	142,202	116,733	116,470	144,823	140,510	118,892
9	190,087	137,561	31,714	152,469	73,037	156,602	65,578	121,741	100,803	141,601	80,812
10	198,012	147,823	34,520	151,389	81,154	151,066	73,274	112,682	114,929	136,286	89,782
11	135,536	217,168	35,389	111,666	105,001	110,665	94,907	71,227	140,645	94,324	112,830
12	108,110	259,972	27,538	107,258	129,496	114,667	114,665	75,758	153,146	97,173	134,854
13	209,502	187,967	40,882	141,063	122,773	132,114	122,431	100,671	156,610	127,881	126,917
14	78,425	335,453	39,235	79,607	171,757	92,074	145,896	55,123	180,759	86,700	158,881
15	164,599	174,188	53,273	132,702	95,574	121,305	97,589	93,085	128,331	117,840	102,710
16	214,334	106,083	52,213	153,163	69,694	154,237	63,877	141,706	80,295	142,672	74,514
17	203,089	141,621	39,443	147,078	90,459	155,250	78,838	115,163	121,457	149,576	86,115
18	167,486	242,122	42,457	157,937	130,741	177,647	100,782	117,483	156,150	154,667	127,473
19	207,675	126,830	49,318	156,705	80,358	167,188	65,873	128,637	108,111	158,628	75,211
	3,250,791	**3,736,311**	**794,301**	**2,482,244**	**2,156,678**	**2,495,593**	**1,991,766**	**1,862,736**	**2,655,038**	**2,308,328**	**2,211,803**
Offic'l	**3,250,764**	**3,736,304**		**2,481,962**	**2,154,908**	**2,495,253**	**1,991,144**	**1,862,934**	**2,651,551**	**2,307,422**	**2,211,471**
Variance	**27**	**7**		**282**	**1,770**	**340**	**622**	(198)	**3,487**	**906**	**332**
1	19.68%	73.98%	6.34%	18.98%	81.02%	16.89%	83.11%	12.42%	87.58%	17.27%	82.73%
2	13.65%	78.65%	7.70%	15.28%	84.72%	13.77%	86.23%	10.16%	89.84%	15.02%	84.98%
3	44.05%	46.89%	9.06%	58.11%	41.89%	61.83%	38.17%	41.40%	58.60%	50.29%	49.71%
4	38.55%	51.74%	9.71%	53.94%	46.06%	60.20%	39.80%	42.87%	57.13%	53.05%	46.95%
5	50.88%	38.86%	10.26%	65.91%	34.09%	66.24%	33.76%	51.30%	48.70%	59.47%	40.53%
6	49.86%	35.92%	14.21%	59.03%	40.97%	57.87%	42.13%	44.82%	55.18%	56.57%	43.43%
7	62.03%	26.55%	11.43%	59.40%	40.60%	58.46%	41.54%	46.31%	53.69%	56.85%	43.15%
8	48.75%	37.50%	13.75%	57.94%	42.06%	54.92%	45.08%	44.57%	55.43%	54.17%	45.83%
9	52.90%	38.28%	8.83%	67.61%	32.39%	70.48%	29.52%	54.70%	45.30%	63.67%	36.33%
10	52.06%	38.86%	9.08%	65.10%	34.90%	67.34%	32.66%	49.51%	50.49%	60.29%	39.71%
11	34.92%	55.96%	9.12%	51.54%	48.46%	53.83%	46.17%	33.62%	66.38%	45.53%	54.47%
12	27.33%	65.71%	6.96%	45.30%	54.70%	50.00%	50.00%	33.10%	66.90%	41.88%	58.12%
13	47.79%	42.88%	9.33%	53.47%	46.53%	51.90%	48.10%	39.13%	60.87%	50.19%	49.81%
14	17.31%	74.03%	8.66%	31.67%	68.33%	38.69%	61.31%	23.37%	76.63%	35.30%	64.70%
15	41.98%	44.43%	13.59%	58.13%	41.87%	55.42%	44.58%	42.04%	57.96%	53.43%	46.57%
16	57.52%	28.47%	14.01%	68.73%	31.27%	70.71%	29.29%	63.83%	36.17%	65.69%	34.31%
17	52.87%	36.87%	10.27%	61.92%	38.08%	66.32%	33.68%	48.67%	51.33%	63.46%	36.54%
18	37.05%	53.56%	9.39%	54.71%	45.29%	63.80%	36.20%	42.93%	57.07%	54.82%	45.18%
19	54.11%	33.04%	12.85%	66.10%	33.90%	71.74%	28.26%	54.33%	45.67%	67.84%	32.16%

District	Governor 1998			U S Senate 1998		Attorney Gen 1996		Auditor Gen 1996		Treasurer 1996		U S Senate 1994	
	Ridge	Itkin	Other	Specter	Lloyd	Fisher	Kohn	Nyce	Casey	Hafer	Knoll	Santorum	Wofford
1	36,787	74,134	4,880	39,736	72,646	32,699	156,559	28,546	158,088	39,518	147,894	34,419	115,819
2	36,876	98,402	6,087	45,022	92,580	29,950	192,369	30,340	188,181	41,258	180,059	26,446	145,280
3	98,937	40,912	28,726	99,231	54,335	119,952	98,398	97,571	117,559	116,553	95,773	108,732	83,002
4	99,866	57,032	32,174	116,568	61,684	139,235	113,969	107,860	141,433	132,329	111,192	118,204	96,144
5	97,547	36,205	21,230	101,182	45,421	125,060	80,816	89,602	114,675	111,855	86,982	104,652	67,552
6	96,723	42,505	15,702	103,656	43,269	118,528	97,999	109,284	101,963	127,862	82,283	94,609	71,674
7	120,883	44,814	18,292	125,291	47,867	141,242	110,952	129,770	118,969	149,590	95,704	114,200	85,634
8	101,859	43,235	12,767	100,051	46,589	119,436	103,489	109,622	110,114	124,815	92,471	92,111	73,205
9	97,823	33,132	21,712	97,228	49,403	130,010	74,027	95,768	107,518	114,889	80,712	102,955	66,061
10	112,093	42,391	14,110	113,694	46,049	120,088	80,920	87,321	118,252	104,916	90,276	100,881	69,372
11	85,726	53,540	12,794	85,957	53,581	86,413	104,279	64,969	134,544	76,475	110,094	74,301	88,394
12	73,057	61,223	30,434	81,709	74,835	93,208	125,149	66,714	149,501	89,703	121,901	80,466	115,063
13	107,842	50,387	15,664	112,718	51,127	111,036	117,150	100,834	122,248	121,989	99,167	94,904	94,118
14	64,421	75,192	21,495	76,733	71,259	82,718	145,985	58,503	163,422	88,056	137,056	70,845	132,707
15	102,566	45,871	8,772	98,370	47,610	99,492	92,626	103,279	90,350	108,356	81,597	81,679	69,173
16	93,286	24,159	15,399	91,207	30,357	127,984	63,411	106,907	80,244	112,937	68,198	100,353	45,895
17	106,734	36,746	18,852	110,251	44,333	127,381	88,647	99,638	115,235	118,656	88,550	105,666	74,121
18	94,133	53,496	35,035	112,960	56,342	151,131	102,243	113,658	132,375	139,481	105,463	123,684	92,161
19	109,203	27,710	14,513	102,720	38,884	132,050	75,264	106310	101,354	121,331	76,958	103,951	61,359
	1,736,362	**941,086**	**348,638**	**1,814,284**	**1,028,171**	**2,087,613**	**2,024,252**	**1,706,496**	**2,366,025**	**2,040,569**	**1,952,330**	**1,733,058**	**1,646,734**
Offic'l	**1,736,844**	**938,745**		**1,814,180**	**1,028,839**	**2,088,163**	**2,026,161**	**1,706,835**	**2,367,760**	**2,041,081**	**1,952,613**	**1,735,691**	**1,648,481**
Variance	(482)	2,341	348,638	104	(668)	(550)	(1,909)	(339)	(1,735)	(512)	(283)	(2,633)	(1,747)
1	31.77%	64.02%	4.21%	35.36%	64.64%	17.28%	82.72%	15.30%	84.70%	21.09%	78.91%	22.91%	77.09%
2	26.09%	69.61%	4.31%	32.72%	67.28%	13.47%	86.53%	13.88%	86.12%	18.64%	81.36%	15.40%	84.60%
3	58.69%	24.27%	17.04%	64.62%	35.38%	54.94%	45.06%	45.35%	54.65%	54.89%	45.11%	56.71%	43.29%
4	52.82%	30.16%	17.02%	65.40%	34.60%	54.99%	45.01%	43.27%	56.73%	54.34%	45.66%	55.15%	44.85%
5	62.94%	23.36%	13.70%	69.02%	30.98%	60.75%	39.25%	43.86%	56.14%	56.25%	43.75%	60.77%	39.23%
6	62.43%	27.43%	10.13%	70.55%	29.45%	54.74%	45.26%	51.73%	48.27%	60.84%	39.16%	56.90%	43.10%
7	65.70%	24.36%	9.94%	72.36%	27.64%	56.01%	43.99%	52.17%	47.83%	60.98%	39.02%	57.15%	42.85%
8	64.52%	27.39%	8.09%	68.23%	31.77%	53.58%	46.42%	49.89%	50.11%	57.44%	42.56%	55.72%	44.28%
9	64.08%	21.70%	14.22%	66.31%	33.69%	63.72%	36.28%	47.11%	52.89%	58.74%	41.26%	60.91%	39.09%
10	66.49%	25.14%	8.37%	71.17%	28.83%	59.74%	40.26%	42.48%	57.52%	53.75%	46.25%	59.25%	40.75%
11	56.38%	35.21%	8.41%	61.60%	38.40%	45.32%	54.68%	32.56%	67.44%	40.99%	59.01%	45.67%	54.33%
12	44.35%	37.17%	18.48%	52.20%	47.80%	42.69%	57.31%	30.86%	69.14%	42.39%	57.61%	41.15%	58.85%
13	62.02%	28.98%	9.01%	68.80%	31.20%	48.66%	51.34%	45.20%	54.80%	55.16%	44.84%	50.21%	49.79%
14	39.99%	46.67%	13.34%	51.85%	48.15%	36.17%	63.83%	26.36%	73.64%	39.12%	60.88%	34.80%	65.20%
15	65.24%	29.18%	5.58%	67.39%	32.61%	51.79%	48.21%	53.34%	46.66%	57.04%	42.96%	54.15%	45.85%
16	70.22%	18.19%	11.59%	75.03%	24.97%	66.87%	33.13%	57.12%	42.88%	62.35%	37.65%	68.62%	31.38%
17	65.75%	22.64%	11.61%	71.32%	28.68%	58.97%	41.03%	46.37%	53.63%	57.26%	42.74%	58.77%	41.23%
18	51.53%	29.29%	19.18%	66.72%	33.28%	59.65%	40.35%	46.20%	53.80%	56.94%	43.06%	57.30%	42.70%
19	72.12%	18.30%	9.58%	72.54%	27.46%	63.70%	36.30%	51.19%	48.81%	61.19%	38.81%	62.88%	37.12%

District	U S Senate 1992		Attorney Gen 1992		Auditor Gen 1992		Treasurer 1992		U S Senate 1991	
	Specter	Yeakel	Preate	Kohn	Hafer	Lewis	Henry	Knoll	Thornburgh	Wofford
1	90,692	146,791	64,451	153,692	62,822	151,644	41,784	168,346	44,609	128,904
2	90,025	176,326	57,224	188,732	56,787	183,905	35,434	200,811	34,670	154,114
3	117,509	115,000	129,640	104,312	138,267	91,696	74,894	153,066	84,816	97,413
4	141,710	129,068	130,076	142,205	147,133	123,187	77,924	189,867	89,924	116,724
5	115,186	103,954	127,138	95,996	137,663	82,334	82,825	136,767	93,050	79,794
6	127,235	108,819	128,887	104,615	135,794	90,793	96,423	130,233	81,677	74,082
7	164,637	125,446	169,759	112,387	166,071	108,859	135,228	137,212	104,866	99,419
8	133,891	118,950	135,136	107,178	125,625	112,813	102,644	129,174	80,451	84,912
9	119,137	88,189	124,534	89,453	132,556	78,217	84,396	128,088	92,267	73,793
10	122,933	98,599	152,699	70,881	129,607	85,938	93,659	124,869	93,023	82,886
11	110,020	114,136	139,130	81,690	102,521	105,612	63,493	136,715	69,898	107,451
12	113,780	134,685	99,139	149,393	109,814	136,584	51,032	194,067	68,104	133,235
13	154,721	114,028	140,983	114,712	133,566	113,464	100,703	141,216	92,539	112,041
14	122,935	158,072	90,679	180,234	108,764	160,721	42,153	222,981	60,575	150,519
15	105,303	109,268	106,931	98,559	110,054	90,738	76,250	121,138	69,523	74,846
16	111,674	74,210	122,066	71,923	117,403	64,338	103,675	85,725	82,710	44,099
17	134,109	96,089	139,763	91,871	138,039	88,935	93,300	133,958	94,286	78,352
18	153,347	119,636	130,502	140,081	150,065	118,886	80,124	184,430	97,026	107,398
19	124,608	90,243	128,411	87,195	133,920	78,033	95,883	113,837	87,558	61,706
	2,353,452	**2,221,509**	**2,317,148**	**2,185,109**	**2,336,471**	**2,066,697**	**1,531,824**	**2,832,500**	**1,521,572**	**1,861,688**
Offic'l	**2,358,125**	**2,224,966**	**2,313,397**	**2,187,792**	**2,340,915**	**2,068,629**	**1,532,527**	**2,832,031**	**1,521,986**	**1,860,760**
Variance	(4,673)	(3,457)	**3,751**	(2,683)	(4,444)	(1,932)	(703)	**469**	(414)	**928**
1	38.19%	61.81%	29.55%	70.45%	29.29%	70.71%	19.88%	80.12%	25.71%	74.29%
2	33.80%	66.20%	23.27%	76.73%	23.59%	76.41%	15.00%	85.00%	18.36%	81.64%
3	50.54%	49.46%	55.41%	44.59%	60.13%	39.87%	32.85%	67.15%	46.54%	53.46%
4	52.33%	47.67%	47.77%	52.23%	54.43%	45.57%	29.10%	70.90%	43.52%	56.48%
5	52.56%	47.44%	56.98%	43.02%	62.57%	37.43%	37.72%	62.28%	53.83%	46.17%
6	53.90%	46.10%	55.20%	44.80%	59.93%	40.07%	42.54%	57.46%	52.44%	47.56%
7	56.76%	43.24%	60.17%	39.83%	60.40%	39.60%	49.64%	50.36%	51.33%	48.67%
8	52.95%	47.05%	55.77%	44.23%	52.69%	47.31%	44.28%	55.72%	48.65%	51.35%
9	57.46%	42.54%	58.20%	41.80%	62.89%	37.11%	39.72%	60.28%	55.56%	44.44%
10	55.49%	44.51%	68.30%	31.70%	60.13%	39.87%	42.86%	57.14%	52.88%	47.12%
11	49.08%	50.92%	63.01%	36.99%	49.26%	50.74%	31.71%	68.29%	39.41%	60.59%
12	45.79%	54.21%	39.89%	60.11%	44.57%	55.43%	20.82%	79.18%	33.83%	66.17%
13	57.57%	42.43%	55.14%	44.86%	54.07%	45.93%	41.63%	58.37%	45.23%	54.77%
14	43.75%	56.25%	33.47%	66.53%	40.36%	59.64%	15.90%	84.10%	28.70%	71.30%
15	49.08%	50.92%	52.04%	47.96%	54.81%	45.19%	38.63%	61.37%	48.16%	51.84%
16	60.08%	39.92%	62.92%	37.08%	64.60%	35.40%	54.74%	45.26%	65.22%	34.78%
17	58.26%	41.74%	60.34%	39.66%	60.82%	39.18%	41.05%	58.95%	54.61%	45.39%
18	56.17%	43.83%	48.23%	51.77%	55.80%	44.20%	30.29%	69.71%	47.46%	52.54%
19	58.00%	42.00%	59.56%	40.44%	63.18%	36.82%	45.72%	54.28%	58.66%	41.34%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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, NORMA JEAN VIETH, and SUSAN FUREY,	:	CIVIL NO. 1:CV-01-2439
Plaintiffs	:	
v.	:	
COMMONWEALTH OF PENNSYLVANIA, *et al.*,	:	
Defendants	:	

ORDER

IT IS HEREBY ORDERED THAT Defendants' renewed motion for stay pending appeal of order granting declaratory judgment and injunction is **GRANTED**, as follows:

(1) Upon consideration of Defendants' renewed motion for stay, the stay is **GRANTED**. Defendants will be allowed to conduct only the 2002 Congressional elections using Act 1;

(2) A hearing is scheduled for the purpose of determining whether Act 34 suitably remedies the constitutional violation found by this court in its order of April 8, 2002. Said hearing shall occur at **9:30 a.m. on Wednesday, May 8, 2002,** in Courtroom No. 2, Ninth Floor, Federal Building, Third and Walnut Streets, Harrisburg, Pennsylvania.

/s/ Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: April 23, 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, NORMA JEAN VIETH, and SUSAN FUREY,	:	CIVIL NO. 1:CV-01-2439
Plaintiffs	:	
v.	:	
COMMONWEALTH OF PENNSYLVANIA, *et al.*,	:	
Defendants	:	

ORDER

Currently before the court are the following motions: (1) Plaintiffs' motion to impose remedial districts and in the alternative to reject Act 34 and begin remedial hearings; (2) Senator Robert Mellow's motion to stay; and (3) Defendants' motion to present evidence at the remedial hearing. Having considered the arguments, **IT IS HEREBY ORDERED THAT:**

(1) Senator Mellow's motion to stay is **DENIED**;

(2) Defendants' motion to present evidence at the remedial hearing is **GRANTED IN PART and DENIED IN PART**, as follows:

> (A) Defendants will be allowed to present the following evidence at the hearing:

(i) An affidavit from Kathleen A. Sullivan, Executive Director of the Legislative Data Processing Center, including documentation of the population database upon which Act 34 was based;

(ii) Certified copies of the Armstrong County Court of Common Pleas docket in No. 2002-00081 and the documents reflected in the docket entries:

(iii) Copies of the Legislative Journals for the Senate and House from April 15 and 17, 2002 which contain debate on Act 34; and

(iv) Copies of the biography of Congressmen John Murtha, appearing on his official website, www.house.gov/murtha, on October 4, 2002.

(B) Defendants will not be allowed to present the affidavit of James Scahill, Chairman of the Armstrong County Board of Commissioners.

(3) The parties shall present oral argument regarding the constitutionality of Act 34 before the three-judge panel at **10:00 a.m. on Thursday, January 9, 2002**, in Courtroom No. 1, Ninth Floor, Federal Building, Third and Walnut Streets, Harrisburg, Pennsylvania. The hearing shall conclude no later than 4:30 p.m. that day.

/s/ Sylvia H Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: November 7, 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, NORMA JEAN VIETH, and SUSAN FUREY,	:	CIVIL NO. 1:CV-01-2439
Plaintiffs	:	
v.	:	
COMMONWEALTH OF PENNSYLVANIA, *et al.*,	:	
Defendants	:	

ORDER

The background of this order is as follows: By an order dated April 8, 2002, the court declared that the Act 1 congressional redistricting plan violated the constitutional requirement of one person-one vote. As a remedial measure, the Commonwealth of Pennsylvania enacted Act 34. Following several continuances of this matter, the court issued an order on November 7, 2002 setting a hearing for oral argument to take place on January 9, 2003 regarding whether Act 34 appropriately remedied Act 1's constitutional flaws. On December 20, 2002, Defendants filed a motion for summary judgment. Accordingly, **IT IS HEREBY ORDERED THAT:**

(1) The hearing regrading Act 34 will take place, as scheduled, on January 9, 2003 at 10 a.m. in Courtroom No. 1, Ninth Floor, the Federal Building, Third and Walnut Streets in

Harrisburg, Pennsylvania.

(2) Plaintiff's shall file their brief in response to Defendants' motion for summary judgment no later than January 7, 2003.[1]

(3) The parties should be prepared to present oral argument on Defendants' motion for summary judgment at the hearing on January 9, 2003.

/s/ Sylvia H. Rambo
SYLVIA H. RAMBO
United States Dsitrict Judge
on behalf of the Panel

Dated: December 30, 2002

[1]The parties are reminded that they must serve all pleadings on all three judges on the panel.

Supreme Court, U.S.
FILED
AUG 29 2003
OFFICE OF THE CLERK

No. 02-1580

IN THE

Supreme Court of the United States

RICHARD VIETH, *et al.*,
Appellants,

v.

ROBERT C. JUBELIRER AND JOHN M. PERZEL, *et al.*,
Appellees.

On Appeal from the United States District Court for the Middle District of Pennsylvania

BRIEF FOR APPELLANTS

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QUESTIONS PRESENTED

1. Whether the District Court erred in effectively concluding that voters affiliated with a major political party may never state a claim of unconstitutional partisan gerrymandering, thereby nullifying this Court's decision in *Davis v. Bandemer*, 478 U.S. 109 (1986).

2. Whether a State presumptively violates the Equal Protection Clause when it subordinates all traditional, neutral districting principles to the overarching goal of drawing a congressional redistricting map that achieves maximum partisan advantage for members of one political party.

3. Whether a State exceeds its delegated power under Article I of the Constitution when it draws congressional-district boundaries to ensure that candidates from one political party will consistently capture a supermajority of the State's congressional seats even if those candidates win less than half the popular vote statewide.

PARTIES TO THE PROCEEDING

Appellants are Richard Vieth, Norma Jean Vieth, and Susan Furey. Appellees are Robert C. Jubelirer, President Pro Tempore of the Pennsylvania Senate; John M. Perzel, Speaker of the Pennsylvania House of Representatives; Edward G. Rendell, Governor of Pennsylvania; Catherine Baker Knoll, Lieutenant Governor of Pennsylvania; Pedro A. Cortés, Secretary of the Commonwealth of Pennsylvania; and Monna J. Accurti, Commissioner of the Bureau of Commissions, Elections and Legislation of the Pennsylvania Department of State.

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OPINIONS BELOW

The District Court's opinion and order are reported at 241 F. Supp. 2d 478 and reprinted at pages 1a to 12a of the Appendix to the Jurisdictional Statement ("J.S. App."). An earlier opinion addressing standards for partisan gerrymandering in more detail is reported at 188 F. Supp. 2d 532 and reprinted at J.S. App. 13a-45a.

JURISDICTION

The three-judge District Court's final opinion and order dismissing Appellants' claims for injunctive relief from an alleged partisan gerrymander were entered on January 24, 2003. Pursuant to 28 U.S.C. § 2101(b), the notice of appeal was timely filed on February 24, 2003. J.S. App. 126a-127a. This Court's jurisdiction is invoked under 28 U.S.C. § 1253.

CONSTITUTIONAL PROVISIONS INVOLVED

The Equal Protection Clause of Section 1 of the Fourteenth Amendment to the United States Constitution provides: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

Section 2 of Article I of the Constitution provides in part: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States . . . ."

The Elections Clause of Article I, Section 4 of the Constitution provides: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

STATEMENT

Following the 2000 census, Pennsylvania lost two congressional seats to reapportionment, and its General Assembly had to enact a new districting plan. The goal of

that plan – frankly admitted by Pennsylvania legislative leaders and the national Republican officeholders who had significant input into the process – was to maximize the number of Republicans elected to Congress throughout the decade, while eliminating as many Democratic incumbents as possible. To that end, the General Assembly sacrificed every redistricting principle traditionally applied in Pennsylvania, slicing through municipalities, counties, and communities and creating bizarrely shaped districts that are commonly referred to by their resemblance to animals (the "supine seahorse," the "upside-down Chinese dragon," etc.). *See, e.g.*, J.S. App. 164a-166a (color maps). The new districting scheme also guaranteed that several Democratic incumbents would lose by "pairing" them in the same districts; by contrast, the scheme provided safe seats for each Republican incumbent and created two open seats custom designed to send particular Republican state senators to Washington. The result was as intended: Republicans won 12 of Pennsylvania's 19 new congressional seats and are now effectively guaranteed a supermajority of seats for the next decade, even if their congressional candidates attract fewer votes statewide than do their Democratic opponents.

What happened in Pennsylvania in 2002, unfortunately, is not an isolated event. Gerrymandering has become an increasingly serious problem nationwide as computer technology has advanced and politicians have grown confident that this Court's ruling in *Davis v. Bandemer*, 478 U.S. 109 (1986), creates no enforceable limits on partisanship in redistricting. At the same time, most congressional districts have become so uncompetitive that electoral outcomes are preordained, even in States with districting plans heavily biased to favor one party. Indeed, in the last election, fewer than one percent of all congressional incumbents lost to challengers.

As we show, there are compelling reasons why this Court should enunciate a workable standard that puts a stop to these severe distortions of the democratic process. To be sure, it would be quixotic to attempt to bar state legislatures from considering politics as they redraw district lines. But when gerrymandering reaches the point where one political party guarantees itself a solid majority of seats, even if it wins only a minority of the votes, the Constitution must provide a remedy.

1. The Current State of Congressional Redistricting: Noncompetitiveness Nationally, Combined with Severe Partisan Bias in Some States.

In *Bandemer*, this Court held that the Equal Protection Clause prohibits severe partisan gerrymanders that consign "majorities . . . to minority status." 478 U.S. at 126 n.9. The plurality opinion announced that a plaintiff raising a partisan-gerrymandering claim must show that "the electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively," and that this showing can be "supported by evidence of continued frustration of the will of a majority of the voters." *Id.* at 133; *see also id.* at 135.

Bandemer's teaching – that the Constitution prohibits redistricting that consistently thwarts majority will – has been lost, however, in subsequent lower-court decisions. Not one congressional or state-legislative districting plan has been struck down as a partisan gerrymander. The courts have nullified *Bandemer* by requiring plaintiffs to show that they will be completely "shut out" of the State's political processes. *See, e.g.*, J.S. App. 39a; *Badham v. Eu*, 694 F. Supp. 664, 670 (N.D. Cal. 1988) (three-judge court) (upholding California's infamous "Phil Burton gerrymander"), *summarily aff'd*, 488 U.S. 1024 (1989). One court went so far as to require plaintiffs to show that a particular redistricting plan turns them into "political

pariahs" unable to win statewide office. *Terrazas v. Slagle*, 821 F. Supp. 1162, 1173 (W.D. Tex. 1993) (three-judge court) (per curiam). Today, despite *Bandemer*, lower courts interpret the Constitution to place no meaningful check on partisan gerrymandering.

Redistricters have taken full advantage of this legal vacuum. The congressional redistricting plans enacted in the wake of the 2000 federal decennial census were historic for two reasons. First, they created remarkably few competitive districts nationwide. Second, in a handful of States, including Pennsylvania, severe gerrymanders dramatically tilted the playing field to favor one political party. These two features interact to frustrate majority rule: The partisan bias makes the House unrepresentative of the people, and the scarcity of competitive seats drains any potential for fixing that imbalance through the normal electoral process.

Noncompetitive Districts. Competitiveness reached historic lows in the 2002 congressional elections. Ordinarily, in the first election following reapportionment and redistricting, competitiveness increases and incumbents are weakened: On average, in the three prior post-reapportionment elections (1972, 1982, and 1992), more incumbents retired from the House than in other election years, more were defeated, and fewer won landslide reelections.[1]

That pattern did not hold in 2002.[2] In most States, the new redistricting plans bolstered the most vulnerable

---

[1] *See* Norman J. Ornstein, Thomas E. Mann & Michael J. Malbin, *Vital Statistics in Congress, 2001-2002*, at 69, 75 (2002) [hereinafter "*Vital Statistics*"].

[2] Except where otherwise noted, all recent election returns cited in this brief come from *CQ's Politics in America 2004: The 108th Congress* (David Hawkings & Brian Nutting eds., 2003) [hereinafter "*Politics in America*"]; Michael Barone & Richard E. Cohen, *The Almanac of* *continued*

incumbents (and suppressed competition) by adding "friendly" precincts to their districts and removing "unfriendly" ones.[3] In the 2002 general elections, only four challengers ousted incumbents – a record low not only for a redistricting year, but for any election year.[4] In California, none of the 50 general-election congressional challengers garnered even 40% of the total vote. As one observer put it bluntly: "'This new plan basically does away with the need for elections.'"[5] On average across the Nation, the 435 victorious candidates won a higher percentage of the major-party vote than in any House election in more than half a century.[6] Indeed, in 80 of the 435 districts, one of the two major parties did not even field a candidate.[7]

American Politics 2004 (2003) [hereinafter "*Almanac*"]; or Clerk of the House of Representatives, *Statistics of the Congressional Election of November 5, 2002* (2003).

[3] *See* Gary C. Jacobson, *Terror, Terrain, and Turnout: Explaining the 2002 Midterm Elections*, 118 Pol. Sci. Q. 1, 10 (2003).

[4] *See Vital Statistics*, *supra* note 1, at 69; Michael J. Dubin, *United States Congressional Elections, 1788-1997*, at xx-xxi (1998).

[5] John Wildermuth, *Lawmakers Use Creative License in Redistricting*, S.F. Chron., Sept. 2, 2001, at A6 (quoting California redistricting consultant Tony Quinn).

[6] *See* Chuck Raasch, *Competition in House Races May Be Thing of the Past*, Gannett News Serv., Nov. 29, 2002 (citing political scientist Gary Jacobson); *see also* Richard E. Cohen, *Broken Barometer*, Nat'l J., July 12, 2003, at 2240, 2241 (noting that 34% of House members in 1992, but only 17% in 2002, won reelection with less than 60% of the vote). "Major-party votes" are those cast for Democratic or Republican candidates and thus exclude the relatively few votes cast for independent or third-party House candidates.

[7] The lack of competitiveness in general elections has not been offset by heightened competition in party primaries. Only four percent of current Representatives won their initial election by defeating an incumbent in a primary. *See Vital Statistics*, *supra* note 1, at 77.

This lack of competition was peculiar to U.S. House elections, where redistricting has an impact: On the same day when barely one out of twelve House elections were decided by ten percentage points or less, roughly half of all gubernatorial and U.S. Senate elections were that close. As one commentator summarized it, "most of the once-responsive House is now locked in cement."[8]

Severe Partisan Bias in Some States. While historic levels of uncompetitiveness infected congressional districting in most States in 2002, severe partisan bias was confined to a handful of States. In States with divided governments, partisan gerrymandering rarely occurs. But where one political party has unilateral control over the legislature and the governorship at the critical moment when the census data come out, extreme partisan gerrymandering becomes possible and, in the current environment, increasingly likely – even in "swing" States where the electorate is divided roughly evenly between Democrats and Republicans.

For example, this decade, at least in four States – Florida, Pennsylvania, Ohio, and Michigan – Republican leaders sought to maximize the number of Republican seats. These are considered "50-50 States," as evidenced by the results in recent statewide elections where redistricting played no role.[9] Nonetheless, after redistricting, Republicans now hold 51 of the States' 77 House seats – a nearly two-to-one advantage.

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[8] Cohen, *supra* note 6, at 2246.

[9] In these four States, Vice President Gore won 50.7% of the major-party vote in the 2000 presidential contest (as compared with 50.1% in the other 46 States), and Democrats now hold four of the eight U.S. Senate seats and two of the four governorships.

This imbalance results not from effective campaigning, appealing candidates, or a significant shift in voter sentiment, but rather from the three classic techniques of partisan gerrymandering: packing, cracking, and pairing.[10] "Packing" and "cracking" are precisely the same concepts found in Voting Rights Act cases: Whenever an identifiable group is unevenly distributed across a State, its voting strength can be diluted either by over-concentrating, or "packing," its members into the fewest possible districts and thus effectively wasting votes that might have had a meaningful impact in neighboring districts, or by fragmenting, or "cracking," concentrations of the group's members and dispersing them into districts where they will constitute ineffective minorities of the electorate. *See Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986).

The third gerrymandering technique is to "pair" two incumbents from the same political party into a single district, which typically forces one of them to retire or lose a bloody primary fight. *See Bush v. Vera*, 517 U.S. 952, 964 (1996) (O'Connor, J., principal opinion) (holding that protecting the seniority of congressional incumbents by avoiding needless pairing is a legitimate state goal) (citing cases). Some pairings were inevitable in Pennsylvania, Ohio, and Michigan, which all lost seats due to reapportionment. But in those three States, the burden fell almost entirely on one party: 15 of the 27 Democratic incumbents, but only 1 of the 29 Republican incumbents,

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[10] *See* Paul R. Abramson, John H. Aldrich & David W. Rohde, *Change and Continuity in the 2000 and 2002 Elections* 262 (2003); Alan I. Abramowitz & Brad Alexander, *A Permanent Republican Majority? The 2002 Midterm Election and the Future of American Politics* 11-12 (Am. Pol. Sci. Ass'n 2003), *available at* http://archive.allacademic.com/publication/docs/apsa_proceeding/2003-08-8/10/apsa_proceeding_10.pdf (visited Aug. 28, 2003); Cohen, *supra* note 6, at 2242, 2244; Jacobson, *supra* note 3, at 1, 9, 19.

were effectively paired. Similarly, in Georgia, where Democrats controlled the process, four Republican incumbents were paired into two districts, even though the State was *gaining* seats and thus no pairings were necessary.

In recent years, redistricters have succeeded in refining these techniques, for three reasons. *First*, advances in computer technology and political databases now enable partisan cartographers to pack more of the rival party's voters into fewer districts. Redistricting software allows mapmakers to craft literally hundreds of different maps, block by block, in a matter of hours. And the computerized integration of election results and voter-registration lists with household-level data gleaned from years of campaign phone banks and door-to-door canvassing provides redistricters with a tool of unprecedented precision.[11]

Second, because fewer voters are "splitting their tickets," partisan voting patterns, especially in federal elections, have become much more consistent from office to office (*i.e.*, from President to U.S. Senator to U.S. Representative) and from election to election.[12] That enables political mapmakers today to gerrymander with greater confidence and efficiency.

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[11] *See, e.g., Martinez v. Bush*, 234 F. Supp. 2d 1275, 1351-52 (S.D. Fla. 2002) (three-judge court) (Hinkle, J., concurring). *See generally* Lisa Handley, *A Guide to 2000 Redistricting Tools and Technology*, in *The Real Y2K Problem* 27, 28-42 (Nathaniel Persily ed., 2000).

[12] *See* Larry M. Bartels, *Partisanship and Voting Behavior, 1952-1996*, 44 Am. J. Pol. Sci. 35, 42-44 (2000); Jacobson, *supra* note 3, at 1, 9; Gary C. Jacobson, *A House and Senate Divided: The Clinton Legacy and the Congressional Elections of 2000*, 116 Pol. Sci. Q. 5, 5-13 (2001); *see also Politics in America, supra* note 2, at xxiii (noting that ticket-splitting in 2002 reached its lowest level since at least 1952).

Third, with the partisan divide in the Nation being razor thin, the political incentives to gerrymander have reached new heights. Nowadays, every last seat counts.[13]

As a result, partisan gerrymandering is not only easier, but more widespread and effective than ever before. As one leading reference book put it, the most recent redistricting will produce a "decade-long partisan lock on most House districts."[14] In Florida, Pennsylvania, Ohio, and Michigan, Republican gerrymanderers in 2001 and 2002 drew districts that spread their own party's voters efficiently, but not so thinly as to significantly threaten Republican incumbents. As a result, each of the Republican incumbents in those States (with one exception) won comfortably, by at least 14 percentage points.

Gerrymandering is also transforming the institution of Congress. With little reason to fear being disciplined by the voters, Representatives increasingly cater to their donors and party insiders, rather than to the political center where most Americans reside.[15] According to political scientists' most sophisticated measure of congressional ideology, the two House caucuses are now perfectly separated in their liberal-conservative ordering, with the most conservative Democrat being to the "left" of the most liberal Republican.[16] In the House, much more than in the Senate, bipartisan compromise around moderate policies takes a backseat to party loyalty, resulting in historic levels of polarization. And

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[13] Former House Speaker Gingrich put it succinctly: "'Redistricting is everything.'" Steven Hill, *Fixing Elections* 318 (2002).

[14] *Politics in America, supra* note 2, at xxv.

[15] *See* Cohen, *supra* note 6, at 2246.

[16] *See* Keith T. Poole, *108th House Rank Ordering, available at* http://voteview.uh.edu/hou108.htm (visited Aug. 28, 2003).

further polarization only fuels the bitterness that promotes more gerrymandering.[17]

That is evident in 2003 in Colorado and Texas, where legislatures that have recently come under one party's unified control have taken the unusual step of trying to redraw congressional districts that courts put in place just two years earlier. The unorthodox procedures used to ram these "re-redistricting" bills through legislative chambers has left state legislatures ever more polarized: Democrats walked out of the Colorado Senate en masse[18] and left Texas altogether to deny the Republicans a quorum.[19] Not surprisingly, in States where Republicans are out of power, Democrats are now threatening to reciprocate.[20] These mid-decade redistrictings will further dampen competition; if legislatures are allowed to fine-tune their gerrymanders every two years with data from the latest elections, the risk of partisan entrenchment will escalate dramatically.

The partisan-gerrymandering wars have spilled out of the legislatures and into the courtrooms. But with no

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[17] *See Politics in America, supra* note 2, at xxiii (describing redistricting's contribution to "[d]eepening partisanship in the House"); *id.* at xxv (quantifying the sharp rise in party-line floor voting in the post-redistricting House); Cohen, *supra* note 6, at 2246.

[18] *See* T.R. Reid, *GOP Redistricting: New Boundaries of Politics*, Wash. Post, July 2, 2003, at A4. Colorado's Senate President frankly admitted that "[n]onpartisanship [was] not an option" and explained that "'[w]e didn't have to play nicey-nicey.'" Sen. John Andrews, *Speakout*, Rocky Mt. News, June 9, 2003; Judith Graham, *Redistricting Draws Partisan Blood in Colorado*, Chi. Trib., May 27, 2003, at 11 (quoting Sen. Andrews).

[19] *See* Nick Madigan, *On the Lam, Texas Democrats Rough It*, N.Y. Times, Aug. 1, 2003, at A11.

[20] *See* George F. Will, *Careless People In Power*, Wash. Post, Aug. 3, 2003, at B7.

prospect of prevailing on a forthright claim of partisan gerrymandering under the lower courts' interpretation of *Bandemer*, aggrieved partisans instead often allege racial gerrymandering or minority vote dilution in violation of the Voting Rights Act. *See, e.g., Easley v. Cromartie*, 532 U.S. 234 (2001). The incentive to couch partisan disputes in racial terms bleeds back into the legislative process, too, as members of the "out" party – believing they can win only in court, and only on a race-based claim – may be tempted to spice the legislative record with all manner of racialized arguments, to lay the foundation for an eventual court challenge.[21]

All of this has not gone unnoticed by the press or academics.[22] Similarly, judges – from Richard A. Posner to Paul V. Niemeyer to Adalberto Jordan – have concurred in the view that reform is needed, but have felt hamstrung by the post-*Bandemer* caselaw that prevents plaintiffs from prevailing on partisan-gerrymandering claims.[23]

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[21] *See* Samuel Issacharoff, *Gerrymandering and Political Cartels*, 116 Harv. L. Rev. 593, 640 (2002); Pamela S. Karlan, *The Rights to Vote: Some Pessimism About Formalism*, 71 Tex. L. Rev. 1705, 1733-35 (1993).

[22] *See, e.g.*, Editorial, *Broken Democracy*, Wash. Post, Nov. 10, 2002, at B6; Editorial, *Incumbent Protection Racket*, Wall St. J., Aug. 15, 2003, at A8; *How to Rig an Election*, The Economist, Apr. 27, 2002, at 29-30; Will, *supra* note 20, at B7; David J. Garrow, *Ruining the House*, N.Y. Times, Nov. 13, 2002, at 29; Dan Rostenkowski, *Take Politics Out of Redistricting*, Chi. Sun-Times, Nov. 10, 2002, at 33; *see also* Samuel Issacharoff & Richard H. Pildes, *Politics as Markets: Partisan Lockups of the Democratic Process*, 50 Stan. L Rev. 643, 704-09 (1998); John Hart Ely, *Gerrymanders: The Good, The Bad, and The Ugly*, 50 Stan. L. Rev. 607, 621 (1998).

[23] *See, e.g.*, Richard A. Posner, *Law, Pragmatism, and Democracy* 242-45 (2003); Paul V. Niemeyer, *The Gerrymander: A Journalistic Catch-Word or Constitutional Principle? The Case in Maryland*, 54 Md. L.

continued

2. Facts and Proceedings Below

Enactment of "Act 1." The Pennsylvania congressional redistricting plan enacted in January 2002 – known as "Act 1" – epitomized the problems just described. As of 2001, Pennsylvania had 11 Republican and 10 Democratic Representatives, but the Republican-controlled General Assembly passed a map that configured the 19 new districts to hand the Republicans at least a 12-to-7 and possibly a 14-to-5 advantage, even if, as often occurs in Pennsylvania, Democratic candidates receive more total votes statewide than do Republican candidates. J.S. App. 132a-133a, 137a-142a. The new Pennsylvania plan was designed, at the urging of national party leaders, to offset expected losses in Georgia, where Democrats had unilateral control of the congressional redistricting process and had already targeted several Republican Representatives for defeat. *Id.* at 133a-134a.

The Pennsylvania legislators, armed with the supercomputer facilities at Carnegie Mellon University,[24] sacrificed every traditional districting principle – slashing through municipalities and neighborhoods, splitting counties, and producing oddly misshapen districts, especially where Democratic voters are concentrated. Among the plan's peculiar features is the "Greenwood Gash," a five-and-a-

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Rev. 242, 257-60 (1995); *Martinez v. Bush*, 234 F. Supp. 2d at 1353 (Jordan, J., concurring); *Badham v. Eu*, No. C-83-1126 RHS (N.D. Cal. Oct. 11, 1988) (three-judge court) (Schnacke, J., dissenting), *available at* Petition for Rehearing 1a, *Badham v. Eu*, 488 U.S. 1024 (1989) (summarily affirming the district court's judgment, over the dissent of Rehnquist, Stevens & Kennedy, JJ.); *cf.* Michael W. McConnell, *The Redistricting Cases: Original Mistakes and Current Consequences*, 24 Harv. J.L. & Pub. Pol'y 103, 105-07, 114-17 (2000).

[24] *See, e.g.*, Jurisdictional Statement, *Republican Caucus of the Pa. House of Rep. v. Vieth*, No. 01-1713, at 1-2, 9-10 (U.S. filed May 21, 2002), *appeal dismissed*, 537 U.S. 801 (2002).

half-mile long isthmus, which narrows at one point to 300 yards, connecting the Republican-leaning Bucks County-based District 8 (represented by Congressman Greenwood) to a heavily Democratic pocket of voters who otherwise would have been in the heart of Montgomery County's District 13 – and thereby might have tipped District 13 decidedly into the Democratic column. J.S. App. 136a; *see id.* at 165a (color map); Joint Appendix ("JA") 132. Several miles away, District 6 starts at the Philadelphia city line, skips westward through several Montgomery County suburbs, turns back to the east through Chester County (almost completely encircling a sizable chunk of District 7), and then juts north into the farm country of Berks County, where it splits four townships before slithering up one side of the city of Reading, which is bisected precinct by precinct to preserve the Republican tilt of two congressional districts. J.S. App. 96a, 154a-157a; *see id.* at 165a (color map). Across the State, in southwestern Pennsylvania, the "line" separating Democratic District 12 from Republican District 18 almost defies verbal description; but the picture at page 166a of the Appendix to the Jurisdictional Statement is worth a thousand words. *See also Politics in America, supra* note 2, at 878 ("Described by an aide to Rep. Murtha as 'an upside-down Chinese dragon,' the strangely contorted 12th hopscotches in southwestern Pennsylvania across nine counties, eight of which are shared with other districts.").

The map also paired six incumbents, five of whom are Democrats. Four Democratic incumbents were paired in two districts, and a fifth Democratic incumbent was paired against a Republican incumbent in a Republican-leaning district. And the plan effectively created an additional pairing, placing the home of one Democratic incumbent barely inside the edge of a district drawn to elect a Republican state senator to Congress, while including most of the Democrat's supporters in the neighboring district, where another Democratic incumbent lived. (Predictably,

the two Democrats then squared off in the 2002 primary.) That placement typified how the map gave Democratic incumbents a far greater share of new voters unfamiliar with them, while largely protecting the core of each Republican incumbent's prior district. The plan's two new open seats were designed to generate two additional Republican incumbents who could hold those seats for a decade or more.

The State-Court Challenge to Act 1. Two Pennsylvania Democratic voters filed suit in state court, claiming that the districting plan's partisan bias violated the Pennsylvania Constitution. The Pennsylvania Supreme Court exercised original jurisdiction over the case and directed the Commonwealth Court to hold an immediate trial. J.S. App. 64a. The Commonwealth Court found that the plan would produce a 14-to-5 or 13-to-6 Republican advantage in the State's congressional delegation, even if Republican candidates received less than half the votes cast. *Id.* at 94a. It also detailed the disparate effects of incumbent pairings as well as the ways in which its drafters ignored such traditional districting criteria as compactness and respect for communities of interest and municipal boundaries where necessary to achieve their partisan goals. *Id.* at 94a-97a.

Ultimately, however, the Pennsylvania Supreme Court rejected the plaintiffs' state-law claims. Purportedly basing its analysis of state law on the plurality opinion in *Davis v. Bandemer*, 478 U.S. at 127-39, the state court held that plaintiffs' claims were deficient because they had not shown that Democrats would be "shut out of the political process." J.S. App. 77a; *see id.* at 74a-77a. In dissent, Chief Justice Zappala commented: "If the record of this case does not establish unconstitutional political gerrymandering, *no such claim exists*. This Court should not then waste its valuable judicial resources entertaining illusory claims that, in reality, can never be established." *Id.* at 125a (emphasis added).

The Federal-Court Challenge to Act 1. Appellants (a different set of Pennsylvania Democratic voters) sued in the Federal District Court, claiming that Act 1 deviated without justification from the strict one-person, one-vote requirement based in Article I, Section 2 of the Constitution, and that Act 1 was a political gerrymander that deprived Pennsylvania's Democratic voters of the rights guaranteed to them by the Equal Protection Clause, as well as Article I, Sections 2 and 4, and the First Amendment. *Id.* at 135a, 137a-145a. Shortly after the state-court litigation concluded, the three-judge panel granted Appellees' motion to dismiss Appellants' political-gerrymandering claims. The court held that Appellants had satisfied *Bandemer*'s first element – "'intentional discrimination against an identifiable political group.'" *Id.* at 32a (quoting *Bandemer*, 478 U.S. at 127 (plurality opinion)). Specifically, the court found that Appellants' allegations that the General Assembly Republicans had "prevented all Democratic input on Act 1 in order to establish a Republican super-majority in Pennsylvania's congressional caucus" were sufficient to establish the Assembly's discriminatory intent against Pennsylvania citizens who vote for Democratic congressional candidates. *Id.* at 32a-33a.

But the District Court held that Appellants did not allege sufficient discriminatory *effects* to satisfy the second element of the *Bandemer* test. The court relied on *Badham v. Eu*, 694 F. Supp. at 670, to hold that Appellants could not establish Act 1's actual discriminatory effects because they could not allege "facts indicating that as a result of Act 1 [they] will be completely shut out of the political process." J.S. App. 33a. More specifically, the court faulted Appellants for failing to allege "that anyone has ever prevented, or will ever prevent, Plaintiffs from: registering to vote; organizing with other like-minded voters; raising funds on behalf of candidates; voting; campaigning; or speaking out on matters of public concern." *Id.* at 39a (citing *Badham*, 694 F. Supp. at 670).

Without such evidence of "impediments to . . . full participation in the 'uninhibited, robust, wide-open' public debate on which our political system relies," the District Court held that Appellants could not state an equal-protection claim, no matter how severe or long-lasting the effects of the partisan gerrymander might be. *Id.* (quoting *Badham*, 694 F. Supp. at 670 (quoting *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964))).

Appellants' one-person, one-vote claim was tried in March 2002. The court allowed Appellants to put into evidence much of their political-gerrymandering case, to rebut Appellees' assertion that the district lines – and the 19-person population deviation they created – were justified because they resulted from the pursuit of legitimate redistricting goals. On April 8, 2002, the District Court ruled in favor of Appellants, concluding that the population deviation was not justified by any neutral, consistently applied redistricting policy like those identified by this Court in *Karcher v. Daggett*, 462 U.S. 725, 740-41 (1983), and that Appellees' effort to explain the deviation in nonpartisan terms was a "mere pretext." J.S. App. at 53a, 57a.

In its findings, the court commented that "*Karcher*'s neutral criteria were not high on the priority list in enacting Act 1." *Id.* at 55a. The court also found that, "[t]o the extent that Act 1 retains the cores of prior districts, it does so only for districts containing Republican incumbents." *Id.* Finally, the court found that Act 1 "failed most miserably" in advancing the neutral goal of avoiding contests between incumbents: Although Pennsylvania's loss of two congressional seats required the pairing of only two sets of incumbents, Act 1 paired more than necessary, in a manner favoring Republicans in each instance. *See id.*

The Remedial Plan, "Act 34." On April 18, 2002, then-Governor Schweiker signed into law Act No. 2002-34, 25 P.S. § 3595.301 ("Act 34"), a remedial plan that the

Pennsylvania General Assembly had passed a day earlier to cure the one-person, one-vote problem.[25] The District Court then stayed its April 8 order, allowing Act 1 to be used for the 2002 elections while Appellees appealed the April 8 order invalidating Act 1. But because Act 34 expressly provided that Act 1 would be replaced by Act 34 after 2002, regardless of the outcome of the litigation, this Court dismissed those appeals as moot. 537 U.S. 801 (2002). And for the same reason, the Court dismissed Appellants' appeal from the dismissal of their partisan-gerrymandering challenges to Act 1. *Id.*

In the District Court, the parties proceeded to dispute whether Act 34, properly interpreted, actually eliminated the population deviation in Act 1 or exacerbated it – a dispute the court ultimately resolved in favor of Appellees in the same order here on appeal. J.S. App. 1a-12a. In addition, Appellants renewed their partisan-gerrymandering arguments, noting that the districts in Act 34 were, for all practical purposes, virtually identical to those in Act 1. Appellants showed that Act 34's districts mirrored those in Act 1, that each contained nearly all of the same population (an average of 99.34% retention per district), and that Act 34 actually increased the map's noncompactness and county and municipal splits. *Id.* at 148a-166a.

The District Court approved Act 34, explaining that it had cured the one-person, one-vote violation, and again

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[25] Although Act 1 and Act 34 were passed on party-line votes in the Pennsylvania Senate, their supporters managed to induce 25 House Democrats to vote for Act 34 (and 42 House Democrats to vote for Act 1). *See* JA 177 (describing the pressure brought to bear on these legislators by some of the Democratic Congressmen whose districts were preserved – and indeed packed with more Democratic voters); *see also* Pa. House Journal at 710-11 (Apr. 17, 2002); Pa. House Journal at 16 (Jan. 3, 2002).

rejected Appellants' partisan-gerrymandering claims. The court acknowledged that Act 34 is essentially the same as Act 1 (population deviations aside) and would have the same "partisan effect." *Id.* at 11a; *see id.* at 9a n.3 ("Despite an opportunity to improve upon the numerous deficiencies of Act 1, Defendants have returned to this court with essentially the same map."). It reiterated that, except for eliminating population deviations, Act 34 (like Act 1) "jettisons every other neutral non-discriminatory redistricting criteria that the Supreme Court has endorsed in the one person-one vote cases." *Id.* at 9a n.3. The court nonetheless held that Appellants' claim could not survive as a result of their failure to "'allege facts indicating that they have been shut out of the political process'" as required under the court's interpretation of *Bandemer* and *Badham*. *Id.* at 11a (quoting *id.* at 39a). This appeal followed.

SUMMARY OF ARGUMENT

1. The Court correctly recognized in *Bandemer* that partisan gerrymandering that thwarts majority rule is an affront to basic democratic values and is unconstitutional under the Equal Protection Clause. Two lines of constitutional cases support *Bandemer*. *First*, in the one-person, one-vote cases, the Court held that the basic democratic principles on which this Nation was founded do not permit legislators to draw unequally populated districts that make the votes cast by some citizens substantially more valuable than those cast by others. The gerrymandering of equally populated districts to favor one political party at the expense of another is just another way to inflict the same injury. *Second*, the Court's First Amendment jurisprudence prohibiting viewpoint-based discrimination is largely premised on the need to protect our democracy from indirect distortion through governmental intrusion into the free marketplace of ideas. The Equal Protection Clause is no less

implicated when government accomplishes a comparable distortion directly through gerrymandering.

In addition, Article I of the Constitution limits partisan gerrymandering of congressional districts. Section 2 of that Article mandates that Representatives be elected directly "by the People of the several States." Section 4 merely grants state legislatures the power to establish procedural regulations for holding those elections. Because the Framers intended the House of Representatives to be a highly responsive "mirror" of popular will, the States' constitutional role is not a "source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 833-34 (1995). When a State sets out to draw congressional districts that have the effect of preventing one party from winning a majority of districts even if it wins a majority of votes, it usurps power that Article I, Section 2 reserves to "the People of the several States" and transgresses the limits of its authority under Article I, Section 4. Indeed, because the Framers intended the House to be the most representative and responsive body in the federal government, courts should scrutinize partisan gerrymandering in the congressional context with particular strictness – just as courts demand a much greater degree of population equality for congressional districts than for other legislative districts.

2. To demonstrate unconstitutional partisan gerrymandering, plaintiffs must make two showings. *First*, plaintiffs must show that the mapmakers acted with a predominant intent to achieve partisan advantage. That can be shown by direct evidence or by circumstantial evidence that other neutral and legitimate redistricting criteria were subordinated to the goal of achieving partisan advantage. *See Miller v. Johnson*, 515 U.S. 900 (1995); *Shaw v. Reno*, 509 U.S. 630 (1993). *Second*, sufficient partisan effects are

established if (1) the plaintiffs show that the districts systematically "pack" and "crack" the rival party's voters, and (2) the court's examination of the "totality of circumstances" confirms that the map can thwart the plaintiffs' ability to translate a majority of votes into a majority of seats.

3. The facts of this case, as stated in Appellants' complaint and as shown by evidence offered at the trial on the one-person, one-vote claim, illustrate how these standards can work in practice without causing undue judicial intrusion into redistricting. The Pennsylvania General Assembly "jettisoned" every neutral districting principle and used every trick in the book – including "packing," "cracking," and disparate "pairing" of incumbents – to assure that it would produce the very outcome we now see: an otherwise competitive State where one party is virtually guaranteed at least a 12-to-7 advantage in the congressional delegation, even when, as often occurs, the other party wins a majority of the votes cast statewide. Pennsylvania's 2002 congressional redistricting plan is a textbook example of an unconstitutional partisan gerrymander.

ARGUMENT

I. THE CONSTITUTION PROHIBITS STATE LEGISLATURES FROM MANIPULATING CONGRESSIONAL DISTRICT LINES TO THWART MAJORITY RULE.

A. The Equal Protection Clause Prohibits Gerrymanders that Consign Electoral Majorities to Minority Status Based on Their Political Viewpoint.

Two key strands of constitutional law combine to provide strong support for barring severe partisan gerrymandering under the Equal Protection Clause. The first

strand, on which the Court expressly relied in *Bandemer*, is the principle reflected in the one-person, one-vote line of cases – that States may not use electoral schemes that render the votes of some citizens more valuable than the votes cast by others. The second strand is the First Amendment bar to governmental viewpoint discrimination.

The primary principle on which this Nation was founded is that governments "deriv[e] their just powers from the consent of the governed." *The Declaration of Independence* para. 2 (1776). This case raises the question whether that principle can be squared with an electoral system deliberately designed to entrench legislators from the "in" party even if the majority of voters come to prefer the "out" party. This Court answered that question in *Bandemer*. In a case challenging a state-legislative plan, the Court held that political-gerrymandering claims are justiciable, relying primarily on *Baker v. Carr*, 369 U.S. 186 (1962), and *Reynolds v. Sims*, 377 U.S. 533 (1964). Extrapolating from "the objective of fair and adequate representation recognized in *Reynolds v. Sims*" and from "our general majoritarian ethic," the Court held that the Equal Protection Clause mandates "a level of parity between votes and representation sufficient to ensure . . . that majorities are not consigned to minority status." 478 U.S. at 126 n.9 (citing *Reynolds*, 377 U.S. at 565).

The problem since then is that lower courts have gutted *Bandemer* by requiring plaintiffs – who are typically affiliated with one of the two major political parties – to show not only that a map thwarts majority rule but also that they have been "shut out" of the State's political processes, in the sense of being prevented from organizing and campaigning. The decision below is a good example. *See* J.S. App. 11a. Such a rule effectively immunizes from scrutiny any gerrymander, no matter how extreme, unless it

is accompanied by separate and independent constitutional violations.

But a biased map designed to transform a voting minority into a legislative majority is by itself a clear violation of the principle of electoral equality recognized in the one-person, one-vote cases. As this Court explained in *Reynolds v. Sims*:

> None would deny that a state law giving some citizens twice the vote of other citizens in either the primary or general election would lack that equality which the Fourteenth Amendment guarantees. . . . The theme of the Constitution is equality among citizens in the exercise of their political rights. The notion that one group can be granted greater voting strength than another is hostile to our standards for popular representative government.

377 U.S. at 564 n.41 (citation omitted). The *Reynolds* Court added:

> Logically, in a society ostensibly grounded on representative government, it would seem reasonable that a majority of the people of a State could elect a majority of that State's legislators. . . . Since legislatures are responsible for enacting laws by which all citizens are to be governed, they should be bodies which are collectively responsive to the popular will.

Id. at 565.

The Court initially hoped that it could check abuses of the redistricting process with the one-person, one-vote requirement alone. But the rule proved to be "perfectly compatible with 'gerrymandering' of the worst sort." *Kirkpatrick v. Preisler*, 394 U.S. 542, 551 (1969) (Harlan, J., dissenting); *see Karcher v. Daggett*, 462 U.S. at 753 (Stevens, J., concurring). *Bandemer* responded to that reality. Just as it was unconstitutional in the one-person,

one-vote context to spread a State's million rural voters among ten districts while concentrating a million urban and suburban voters into only five, it is likewise unconstitutional to give a State's million Republicans control over ten seats while leaving a million Democrats with control over five.

A second line of cases provides additional support for effective limits on partisan gerrymandering: the Court's First Amendment cases barring governmental imposition of a political orthodoxy and other forms of governmental discrimination based on viewpoint. The First Amendment's bar against viewpoint-based discrimination serves, in part, to prevent indirect distortion of democracy and majority rule. As the Court put it in *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943), "We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority." *Id.* at 641. Similarly, in the first case barring political discrimination in access to civil-service positions, *Elrod v. Burns*, 427 U.S. 347 (1976), the plurality proclaimed that "the First Amendment was intended to protect a democratic system whose proper functioning is indispensably dependent on the unfettered judgment of each citizen on matters of political concern." *Id.* at 372. Much the same purpose is served by the Court's many rulings barring other forms of governmental viewpoint discrimination. *See, e.g., Rosenberger v. Rector & Visitors of the University of Virginia*, 515 U.S. 819, 828-29 (1995); *Police Dep't v. Mosley*, 408 U.S. 92, 96 (1972).

Distorting democracy directly through partisan gerrymandering is even more destructive of our democratic system. Redistricting has a powerful "impact on effective competition in the marketplace of political ideas. For without a fair opportunity to elect representatives, freedom of political association yields no policy fruit." Robert G.

Dixon, Jr., *Democratic Representation: Reapportionment in Law and Politics* 499 (1968). Those in government who are entrusted with the job of making the rules of the election game must not be allowed to transform the democratic process into its opposite.[26]

The effects of partisan gerrymandering are profoundly anti-democratic. It can replace the "consent of the governed" with a system in which legislators decide who will remain in office and whom they will represent. "'The final result seems not one in which the people select their representatives, but in which the representatives have selected the people.'" *Bush v. Vera*, 517 U.S. at 963 (O'Connor, J., principal opinion) (citation omitted). This foreordaining of election outcomes is particularly troubling when district lines effectively guarantee the controlling party a large majority of seats regardless of changes in the public's partisan leanings. While "everyone's vote still counts," that truism does little to preserve democracy when a districting scheme is carefully and purposefully arranged to minimize the political power of those holding a particular viewpoint – even where that viewpoint is or becomes the majority view.[27]

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[26] Closely analogous are this Court's decisions barring governments from erecting barriers that make it more difficult for particular groups of citizens to urge the adoption of laws protecting their interests. *See Romer v. Evans*, 517 U.S. 620, 633 (1996) ("Central both to the idea of the rule of law and to our own Constitution's guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance."); *Hunter v. Erickson*, 393 U.S. 385, 391 (1969) (a law that "places special burdens on racial minorities within the governmental process . . . is no more permissible than denying them the vote, on an equal basis with others").

[27] In the past, partisan gerrymandering may well have been a self-limiting enterprise either because of resistance from incumbents or because an overly ambitious gerrymander could lead the controlling party to disaster. But with modern technologies and data, a carefully designed

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To be sure, partisan considerations and political viewpoint will play a part in any redistricting process run by political institutions such as state legislatures. "It would be idle . . . to contend that any political consideration taken into account in fashioning a reapportionment plan is sufficient to invalidate it." *Gaffney v. Cummings*, 412 U.S. 735, 752 (1973). But while "judicial interest should be at its lowest ebb when a State purports fairly to allocate political power to the parties in accordance with their voting strength," *id.* at 754, judicial interest should be at its zenith when the one political party transiently enjoying majority control harnesses the power of the State to insulate itself from democratic accountability.[28]

B. Extreme Partisan Gerrymandering of Congressional Districts Offends Article I of the Constitution.

Although the Equal Protection Clause, without more, prohibits egregious partisan gerrymandering as occurred here, the Court should also take note of the especially strict constitutional limits that Article I imposes on States when they are drawing *congressional* districts. In that context, the state legislatures exercise a federal power delegated to them by the Elections Clause of Article I, U.S. Const. art. I, § 4, cl. 1, and must do so in a manner consistent with Article I's requirement that Representatives be directly elected "by the People of the several States," *id.* § 2, cl. 1. *See generally Wesberry v. Sanders*, 376 U.S. 1, 7-18 (1964).

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map can now hand a supermajority of seats to a "minority" party while simultaneously making most or all of the districts noncompetitive.

[28] As Judge Posner recently noted, "judicial insouciance" toward partisan gerrymanders "designed to create 'safe' seats for the party that controls the legislature" has undermined "electoral competition, the lifeblood of democracy." Posner, *supra* note 23, at 244-45.

The institution that was meant by the Framers to truly represent "the People" was aptly named the House of Representatives. Under the "Great Compromise," the Senate would represent the States, while the House of Representatives would represent the People. *See id.* at 12-14. Senators would be chosen for six-year terms by the state legislatures, U.S. Const. art. I, § 3, cl. 1; Representatives would be directly elected for two-year terms "by the People of the several States," *id.* § 2, cl. 1.

As George Mason explained at the Constitutional Convention, the House of Representatives "was to be the grand depository of the democratic principle of the Govt." 1 *The Records of the Federal Convention of 1787*, at 48 (Max Farrand ed., rev. ed. 1966) [hereinafter "Farrand"]. John Adams had argued that a representative assembly "should be in miniature an exact portrait of the people at large. It should think, feel, reason and act like them." John Adams, *Thoughts on Government* (1776), in 1 *American Political Writing During the Founding Era, 1760-1805*, at 403 (Charles S. Huneman & Donald S. Lutz eds., 1983). Likewise, at the Convention, James Wilson of Pennsylvania advocated a national legislature that would be "the most exact transcript of the whole Society." 1 Farrand, *supra*, at 132. "Thus the Framers, in perhaps their most important contribution, conceived of a Federal Government directly responsible to the people, possessed of direct power over the people, and chosen directly, not by States, but by the people." *U.S. Term Limits*, 514 U.S. at 821; *see also* 2 Joseph Story, *Commentaries on the Constitution of the United States* § 574 (1833) ("The [people's] choice [of Representatives] is to be made immediately by them; so that the power is direct; the influence direct; and the responsibility direct.").

Consistent with their vision of the House of Representatives as accountable to the people rather than to

the States, the Framers limited the States' involvement to the power to set "[t]he Times, Places and Manner" of holding congressional elections. U.S. Const. art. I, § 4, cl. 1. The state legislatures' delegated Elections Clause authority was largely confined to procedural matters such as "notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns." *Smiley v. Holm*, 285 U.S. 355, 366 (1932). As this Court noted in *U.S. Term Limits*, "the Framers understood the Elections Clause as a grant of authority to issue procedural regulations, and not as a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints." 514 U.S. at 833-34; *see Cook v. Gralike*, 531 U.S. 510, 523 (2001).

The carefully constructed grant of authority to state legislatures reflects the Framers' "overriding concern" regarding "the potential for States' abuse of the power." *U.S. Term Limits*, 514 U.S. at 808-09. The Framers were particularly worried that factional control of state legislatures might frustrate the will of the people in congressional elections. Discussing the Elections Clause at the Constitutional Convention, Madison noted:

> It was impossible to foresee all the abuses that might be made of the discretionary power. . . . Whenever the State Legislatures had a favorite measure to carry, they would take care so to mould their regulations as to favor the candidates they wished to succeed. Besides, the inequality of the Representation in the Legislatures of particular States, would produce a like inequality in their representation in the Natl. Legislature, as it was presumable that the Counties having the power in the former case would secure it to themselves in the latter.

2 Farrand, *supra*, at 240-41.

Madison's fear that a state legislature might abuse its authority to override majority rule was echoed throughout the ratifying conventions. In Massachusetts, one delegate worried that state legislatures,

> when faction and party spirit run high, would introduce such regulations as would render the rights of the people insecure and of little value. They might make an unequal and partial division of the states into districts for the election of representatives, or they might even disqualify one third of the electors.

2 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 27 (Jonathan Elliot ed., 2d ed. 1888) [hereinafter "Elliot's Debates"] (Parsons). Another delegate noted that "a part [of Congress] should proceed directly from the people, and not from their substitutes, the legislatures; therefore the legislature ought not to control the elections," since "the [state] legislature may have a power to counteract the will of a majority of the people." 2 *id.* at 49 (Dana). In North Carolina, a delegate explained that limiting the state legislatures' authority over congressional elections would help "secure a representation from every part, and prevent any improper regulations, calculated to answer party purposes only." 1 *Annals of Congress* 797 (1789) (Ames).

To combat that danger, the Framers limited States' authority to regulate congressional elections. This Court therefore has interpreted Article I to mandate that congressional districts adhere to an equal-population standard much stricter than the one applicable to state and local legislative districts, *Karcher v. Daggett*, 462 U.S. at 732-33; to prohibit States from excluding congressional candidates through term-limit laws, *U.S. Term Limits*, 514 U.S. at 786-87; and to bar them from seeking to influence election outcomes by placing information about the candidates' issue positions on the ballot, *Gralike*, 531 U.S. at

523-26. Comparable strictness must apply to partisan gerrymandering of congressional districts, which unquestionably distorts the direct "relationship between the people of the Nation and their National Government, with which the States may not interfere." *U.S. Term Limits*, 514 U.S. at 845 (Kennedy, J., concurring).

As Judge Niemeyer has noted, "the right of the people to elect directly their Representatives to the larger House of the federal legislature means nothing if the Constitution does not forbid the states from manipulating the boundaries of congressional districts" in attempts to "dictate the outcome" of "the people's congressional elections." *Anne Arundel County Republican Cent. Comm. v. State Admin. Bd. of Election Laws*, 781 F. Supp. 394, 402-03, 406 (D. Md. 1991) (three-judge court) (Niemeyer, J., dissenting), *summarily aff'd*, 504 U.S. 938 (1992). Judge Niemeyer's dissent resonates with an opinion Justice Black penned nearly half a century earlier, in *Colegrove v. Green*, 328 U.S. 549 (1946):

> [The States'] federally granted power with respect to elections of Congressmen is not to formulate policy but rather to implement the policy laid down in the Constitution, that, so far as feasible, votes be given equally effective weight. Thus, a state legislature cannot deny eligible voters the right to vote for Congressmen and the right to have their vote counted. It can no more destroy the effectiveness of their vote in part and no more accomplish this in the name of "apportionment" than under any other name. For legislation which must inevitably bring about glaringly unequal representation in the Congress in favor of special classes and groups should be invalidated, "whether accomplished ingeniously or ingenuously."

Id. at 571 (Black, J., dissenting) (citation omitted).

II. THE COURT SHOULD ENUNCIATE A CLEAR STANDARD FOR IDENTIFYING UNCONSTITUTIONAL PARTISAN GERRYMANDERS.

Although this Court recognized in *Bandemer* that a claim of partisan gerrymandering is justiciable, a majority of Justices could not reach agreement on a workable standard for differentiating between the "normal" consideration of political factors in redistricting and the excessive, and hence presumptively unconstitutional, use of party and partisan data. Appellees will attempt to insulate partisan gerrymandering from all judicial review by arguing, as they did below, that no intelligible standard can ever be applied consistently by the lower courts. This Court should reject that suggestion, just as it has done each time it has addressed other constitutional limits on redistricting – from one-person, one-vote, to racial vote dilution, to racial gerrymandering.

Each of those advances in redistricting law was met by a chorus of naysayers decrying the new standards as "unworkable." *See, e.g., Baker v. Carr*, 369 U.S. at 268 (Frankfurter, J., dissenting) (predicting that the one-person, one-vote standard would "catapult[] the lower courts" into a "mathematical quagmire"); *Reynolds v. Sims*, 377 U.S. at 621 (Harlan, J., dissenting) (delivering "the cold truth that cases of this type are not amenable to the development of judicial standards"); *Whitcomb v. Chavis*, 403 U.S. 124, 169 (1971) (separate opinion of Harlan, J.) (accusing the Court, in a minority vote-dilution case of first impression, of becoming "enmeshed in [a] haze of slogans and numerology"); *Shaw v. Reno*, 509 U.S. at 661 (White, J., dissenting) (attacking the Court's standard for "invit[ing] constant and unmanageable [judicial] intrusion").

But each generation of critics has been proved wrong. The lower courts have applied the tests set out in these cases with an admirable degree of consistency. And, perhaps more importantly, redistricters have internalized the standards and

generally steered clear of any potential liability. Today, virtually all districting plans comply with one-person, one-vote standards, minority representation has climbed to levels unimaginable a generation ago, and the crazy-quilt racial line-drawing of the early 1990s has been almost universally abandoned.[29] The Court should follow the same path in addressing the problem of partisan gerrymandering that has become so pronounced in recent days.

To limit judicial intrusion and target the truly egregious examples where gerrymandering can frustrate majority rule, the Court should adopt a standard that is clear and narrowly tailored to the problem at hand. A clear standard will insulate lower-court judges from false accusations of partiality. And a narrowly tailored standard that places a heavy burden of proof on plaintiffs will avoid "throw[ing] into doubt the vast majority of the Nation's 435 congressional districts." *Miller v. Johnson*, 515 U.S. at 928 (O'Connor, J., concurring).

The test proposed here borrows heavily from this Court's established jurisprudence on redistricting but adapts each part to the partisan-gerrymandering context. The test's "intent" element recognizes, as the Court's *Shaw* cases recognized with respect to race, that politics can be a permissible redistricting consideration but cannot override all other considerations. The test's "effects" element builds on this Court's well-established jurisprudence on vote dilution, which addresses analogous harms, but requires plaintiffs to make a stronger showing consistent with the

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[29] While some Members of the Court faulted the *Shaw* line of cases for failing to provide a clear line between the uses of race that are unconstitutional and those that are justified by the Voting Rights Act, *see, e.g., Bush v. Vera*, 517 U.S. at 1063-64 (Souter, J., dissenting), no such "Catch-22" problem could be raised here. A State cannot be held liable for *avoiding* partisan gerrymandering.

Bandemer Court's focus on partisan gerrymanders that thwart majority rule.

A. The Intent Element

Politics will always be a part of redistricting. It can be legitimate, for example, to consider political data when attempting to produce a "fair" map. *See Gaffney v. Cummings*, 412 U.S. at 751-54; *see also Easley v. Cromartie*, 532 U.S. at 257-58 (upholding a district drawn to preserve a congressional delegation with six Republicans and six Democrats). It is also asking too much to expect line-drawers *never* to consider the goal of gaining partisan advantage in particular districts. To prevent the mere consideration of politics from triggering a *Bandemer* claim, the Court should require a higher showing: that partisan advantage was the predominant motivation behind the entire statewide plan. *Cf. Miller v. Johnson*, 515 U.S. at 910-20.

A predominant intent to achieve partisan advantage can sometimes be shown directly – as in Colorado and Texas this year, when redistricters have frankly admitted that they are replacing perfectly legal maps, out of season, solely for partisan advantage. Direct evidence of excessive partisanship can be critical because, as political scientists have long recognized, some partisan gerrymanders can be highly effective without generating "ugly" maps. *See, e.g.*, Bernard Grofman, *Criteria for Districting: A Social Science Perspective*, 33 UCLA L. Rev. 77, 88, 170-71 (1985).

More often, a predominantly partisan intent will be shown through circumstantial evidence that other legitimate and neutral districting criteria were subordinated to partisan considerations. Although the list of traditional districting criteria may vary somewhat, depending on each State's constitution and customary practices, this Court has already identified five key principles: (1) contiguity; (2) compactness; (3) respect for political subdivisions such as counties and municipalities; (4) respect for communities

defined by actual shared interests; and (5) avoiding the needless pairing of two or more incumbent Representatives in a single district. *See Bush v. Vera*, 517 U.S. at 964 (O'Connor, J., principal opinion); *Miller v. Johnson*, 515 U.S. at 916; *Shaw v. Reno*, 509 U.S. at 646-47. The systematic violation of these principles can provide persuasive circumstantial evidence that partisan maximization was the legislature's dominant and controlling rationale in drawing district lines. *Cf. Miller v. Johnson*, 515 U.S. at 913; *Grutter v. Bollinger*, 123 S. Ct. 2325, 2344 (2003) (approving the use of race when "all factors . . . are meaningfully considered").

To satisfy the intent element using circumstantial evidence, plaintiffs must show not only that these traditional districting criteria have been neglected but also that this neglect resulted from an effort to achieve partisan goals. *See Bush v. Vera*, 517 U.S. at 993 (O'Connor, J., concurring). In some instances, it may not be obvious at first glance whether the subordination of the traditional criteria was caused by excessive considerations of party or of race. *See, e.g., Easley v. Cromartie*, 532 U.S. at 241-58. If the map's bizarre shapes and splintered municipalities are largely confined to the boundaries of heavily black or Latino districts, race rather than party likely predominated. *See, e.g., Bush v. Vera*, 517 U.S. at 965-76 (O'Connor, J., principal opinion). But if these defects are also found along the boundaries separating majority-white districts – and especially where Republican districts abut Democratic ones – *partisan* gerrymandering is more likely the culprit.

B. The Effects Element

Because partisan-gerrymandering claims – unlike racial-gerrymandering claims under the *Shaw* doctrine – ultimately hinge on the systematic debasement of certain citizens' voting strength, plaintiffs also must satisfy the demanding test for unconstitutionally discriminatory partisan *effects* on a

statewide basis. By themselves, bad intent and bizarre district shapes can never make out a valid claim of partisan gerrymandering. *See Bandemer*, 478 U.S. at 139, 141 (plurality opinion).

1. The Majoritarian Standard

To satisfy the effects element, plaintiffs must show that the plan needlessly undermines the democratic accountability of elected representatives to shifting majoritarian preferences – specifically, that the rival party's candidates could be consigned to less than half the seats even if its candidates consistently won a majority of votes statewide. Such a plan effectively transforms majoritarian government into its opposite. *See id.* at 126 n.9 (majority opinion).

Importantly, this test does not compel proportional representation and is not satisfied by a mere demonstration that a political party has won fewer seats than its share of the electorate suggests. District-based systems with winner-take-all elections rarely generate proportionality, and it is normal for the party winning a relatively large majority of the votes statewide to carry an even larger majority of the seats. *See id.* at 130, 133 (plurality opinion). Moreover, the Constitution gives no group a right to proportional representation. Indeed, the Constitution's "majoritarian ethic" would be upheld regardless of whether the prevailing party in an election won a proportionate share of the seats or 100% of the seats – as might well occur, for example, if Pennsylvania elected all of its Representatives at-large, in one statewide contest, as it did in the early days of the Republic. *See* Kenneth C. Martis, *The Historical Atlas of United States Congressional Districts, 1789-1983*, at 50, 52 (1982). *But see* 2 U.S.C. § 2c (generally requiring single-member House districts).

But democracy is thwarted when one party can consistently earn majority support in the electorate yet never

win as many seats as the party it outpolls. As Justice Stewart put it, redistricting plans should not "permit the systematic frustration of the will of a majority of the electorate of the State." *Lucas v. Forty-Fourth General Assembly of Colorado*, 377 U.S. 713, 753-54 (1964) (dissenting opinion); *see Bandemer*, 478 U.S. at 126 n.9; *id.* at 133, 135 (plurality opinion). Thus, a plan does not become unconstitutional merely because in one or two election cycles particular candidates win upsets and give one party an unexpectedly large number of congressional seats. Likewise, the Constitution would not bar a plan that is drawn to favor a particular incumbent, but is otherwise fair statewide.

At bottom, the majoritarian standard simply reflects the fundamental democratic principle of majority rule – a party that earns majority support (even by a very slim margin) should have at least a fighting chance (not a guarantee) of winning a majority of seats. If gerrymandering enables one party to lock up a majority of seats even if the other party overtakes it in popular support, democratic accountability ceases to function as a check on governmental power. Our Constitution does not empower partisan cartographers to invert popular minorities into governing majorities.[30] As Judge McConnell has explained, a districting scheme that

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[30] Defendants cannot defeat a claim merely by showing that the rival party would get a majority of seats if it increased its vote share to a level that history shows to be improbable. It will always be true that either party would win a majority of seats with *some* percentage of the vote. Under "the basic majoritarian principle," it should be enough for plaintiffs to show that their party will be consistently consigned to minority status with 50% or more of the vote. Arend Lijphart, *Comparative Perspectives on Fair Representation*, in *Representation and Redistricting Issues* 143, 147 (Bernard Grofman, Arend Lijphart, Robert B. McKay & Howard A. Scarrow eds., 1982); *see also* Bernard Grofman & Howard A. Scarrow, *The Riddle of Apportionment: Equality of What?*, 70 Nat'l Civic Rev. 242, 253 (1981).

places "a minority faction . . . in complete control, without regard to democratic sentiment, violates the basic norms of republican government."[31]

Appellants urge the Court to adopt this majoritarian standard because it distinguishes the permissible consideration of politics from egregious and unconstitutional partisanship in redistricting. But regardless of how the Court ultimately defines the proper standard, it must reject the lower courts' misguided requirement that plaintiffs prove they "will be completely shut out of the political process" as a result of separate burdens on rights of free speech and association. J.S. App. 33a; *see id.* at 39a (citing *Badham v. Eu*, 694 F. Supp. at 670). The "shut out" test eviscerates *Bandemer* and conflicts with both the Framers' understanding of Article I and this Court's long-standing interpretation of the Equal Protection Clause in voting cases.

2. Operationalizing the Majoritarian Standard

Evaluating the effects element in a partisan-gerrymandering case will generally require a two-step inquiry. *First*, as a necessary prerequisite, plaintiffs must show that the challenged districting plan systematically "packs" and "cracks" their party's voters. *Second*, plaintiffs ultimately must show, based on the "totality of circumstances" – which would encompass, among other things, the targeting of one party's incumbents – that the plan could consistently prevent plaintiffs' party from winning a majority of seats even if its candidates repeatedly earned a narrow majority of votes statewide. This two-step structure resembles the inquiry courts use to evaluate claims under the "results" test of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, which requires plaintiffs first to prove the "*Gingles* preconditions" and then to demonstrate vote

[31] McConnell, *supra* note 23, at 105.

dilution under the "totality of circumstances" standard. *See Johnson v. De Grandy*, 512 U.S. 997, 1011-12 (1994) (citing *Gingles*, 478 U.S. at 46-51, 55-58, 79-80).

Proving Systematic "Packing" and "Cracking" of One Party's Voters. As discussed above, the primary techniques used by political mapmakers seeking to dilute the votes of a rival group are "packing" and "cracking." By "packing" most of the rival party's voters into a few districts where they have excessive majorities, and "cracking" the rest into a larger number of districts where they have no real prospect of electoral success, partisan mapmakers can partially disenfranchise one party's voters. *See Gingles*, 478 U.S. at 46 n.11; *see also* 28 C.F.R. § 51.59(c)-(d). Because these techniques are central to any severe partisan gerrymander, plaintiffs should be required to prove first that they were used systematically to debase their votes.

To see how packing and cracking work in practice, a numerical example is useful. Imagine a highly competitive State with 700 voters (350 leaning Republican and 350 leaning Democratic) and seven congressional districts, each containing 100 voters. In Election #1, a fair map is in place, with two districts where Republicans have a 52-to-48 edge, two districts where Democrats have a 52-to-48 edge, and three other districts that appear to be 50-50 tossups, where the winner will be determined by the quality of campaigns, turnout, and perhaps a bit of luck. Each party has the same number of supporters statewide, and neither party can be assured of controlling a majority of seats in the State's congressional delegation.

But if, instead, redistricting occurs and the Democrats enact a partisan gerrymander, then Election #2 might go as follows: The Republicans will now have a 75-to-25 advantage in each of two districts, and the Democrats will have a 60-to-40 advantage in each of the other five districts. Although both parties still have the same number of

supporters statewide (350 apiece), Democrats will now control a supermajority of the seats (five out of seven). Two years later, in Election #3, even if the Republicans retain all of their original supporters and convince five Democrats in each district to switch sides and vote Republican – giving them a resounding 55%-to-45% advantage statewide – the Republicans still will win only two of the seven seats. (Republicans will then have 80-to-20 majorities in two districts but will lose each of the other five districts by a vote of 55 to 45.) In the first two districts, Republicans are "packed" because 75% or 80% is an excessive majority; and in the other five districts, Republicans are "cracked" because 40% or 45% is an ineffective minority. While most of the Republican votes are wasted, most of the Democratic votes are efficiently distributed across the districts. The result is that five districts are now significantly more Democratic than the State's average district, but only two are more Republican. By contrast, prior to the gerrymandering, roughly half the districts were more Democratic than average, and half were more Republican than average.

In assessing a newly enacted map, one can identify systematic packing and cracking by considering whether, in a 50-50 election, one party would consistently carry more than half the districts. One way to answer that question, even before elections have been held using the new districts, is through statistical analyses based on prior statewide races. *See infra* pp. 45-48 (describing expert testimony in the record below).[32] If the facts show a high degree of

[32] Redistricting experts typically study how many districts each party would carry in a 50-50 election by analyzing data from previous elections for statewide offices such as U.S. Senator, governor, and attorney general. *See, e.g.*, JA 32-34; Charles Backstrom, Leonard Robins & Scott Eller, *Establishing a Statewide Electoral Effects Baseline* in *Political Gerrymandering and the Courts* 145, 159-65 (Bernard Grofman ed., 1990). Elections held under the challenged map may be a poor *continued*

confidence that, in any 50-50 election, one party will carry more districts than the rival party, then the rival party's voters have been systematically packed and cracked and the plan may frustrate majority rule if that party garners a slim majority of the vote statewide.

As this discussion suggests, the only way to assess packing and cracking is on a statewide basis. *See Bandemer*, 478 U.S. at 127, 136 (plurality opinion); *see also Georgia v. Ashcroft*, 123 S. Ct. 2498, 2511 (2003) (requiring statewide assessment of claims brought under Section 5 of the Voting Rights Act because "gains in the plan as a whole" may offset losses in particular districts). *Compare Easley v. Cromartie*, 532 U.S. at 243 (unlike partisan gerrymandering, racial gerrymandering can be confined to one district). The fact that a given district may favor a given party has no significance by itself, absent statewide effects.

In some cases, defendants may argue that packing and cracking the rival party's voters were unavoidable consequences of their "natural" geographic distribution across the State. For example, one might expect that packing Democrats in New York State follows inevitably from the huge mass of overwhelmingly Democratic neighborhoods in New York City, assuming there are no equivalently large and lopsided concentrations of Republicans elsewhere in the State. To overcome that defense, plaintiffs should be required at trial to present an alternative "illustrative" plan that eliminates or substantially reduces the partisan bias in the challenged plan while respecting the State's traditional

measure because the map itself can skew each party's vote totals. In 2002, for example, Democratic congressional candidates in Pennsylvania received a much lower share of the statewide vote because there were more Republican than Democratic incumbents left standing after redistricting and because five of the Republicans were unopposed by Democrats in their new noncompetitive districts.

districting principles (contiguity, compactness, and so forth). This requirement – that plaintiffs produce an illustrative plan showing that there is indeed a remedy for the wrong they allege – comes directly from this Court's Voting Rights Act jurisprudence. *See Gingles*, 478 U.S. at 50-51 (requiring plaintiffs to present an alternative map demonstrating that their minority group is sufficiently large, geographically compact, and politically cohesive to constitute an effective voting majority in at least one additional district).

Proving Frustration of Majority Rule Under the "Totality of Circumstances." Proof of systematic packing and cracking would be necessary – but not always sufficient – to make out a claim of unconstitutional partisan gerrymandering. A court must assess the probative significance of packing and cracking after considering all circumstances with arguable bearing on the issue of partisan gerrymandering. *Cf. De Grandy*, 512 U.S. at 1013. As in Voting Rights Act cases, this inquiry will require lower-court judges to use their "familiarity with the indigenous political reality" to conduct an "intensely local appraisal" of the totality of circumstances. *Gingles*, 478 U.S. at 45, 78-79 (citations and internal quotation marks omitted).

Courts could consider many factors at this stage of the inquiry, including how the plan affects specific candidates and especially the role of incumbency. At the congressional level, political scientists generally estimate that incumbents have an advantage of somewhere between five and twelve percentage points. *See* Gary C. Jacobson, *The Politics of Congressional Elections* 21-40 (5th ed. 2001). Thus, if a new map targets for defeat only one party's incumbents, that disparate effect must be taken into account. In theory, pairing of incumbents could be used to *offset* packing and cracking, resulting in a reasonably fair plan. More often, it will be used to further benefit the controlling party.

Whatever the factors considered in the totality-of-circumstances inquiry, the trial court ultimately must answer a single question: Could the redistricting plan operate to thwart the will of the majority?

III. THIS IS A TEXTBOOK CASE OF UNCONSTITUTIONAL PARTISAN GERRYMANDERING.

Pennsylvania's 2002 congressional plan is the paradigmatic example of an extreme partisan gerrymander. As Pennsylvania Chief Justice Zappala put it, "If the record of this case does not establish unconstitutional political gerrymandering, *no such claim exists*." J.S. App. 125a (emphasis added). The Court should make clear that such a claim does exist and should direct the District Court to consider it under the proper standards. Under the test Appellants propose – or any variant of that test faithful to the Framers' vision of majority rule – Appellants have alleged more than enough to survive a motion to dismiss. The trial court erred by requiring them to prove that they had been "'shut out of the political process.'" J.S. App. 11a-12a (citation omitted). This Court should reverse that judgment and give Appellants a chance to prevail on remand.

A. Appellants Alleged Extreme Partisan Gerrymandering that Violates the Constitution.

Appellants' complaint directly addressed both discriminatory intent and discriminatory effects. Pointing to direct evidence of intent, the complaint stated that the map was drawn at the urging of Republican leaders in Washington seeking "maximum partisan advantage, regardless of the cost," and quoted the chair of the National Republican Congressional Committee as saying that Pennsylvania would serve as payback for Democratic gerrymandering in Georgia: "'Democrats rewrote the book when they did Georgia, and we would be stupid not to reciprocate. . . . [Pennsylvania] will make Georgia look like a picnic.'" J.S. App. 133a-134a (quoting Rep. Thomas M.

Davis III).[33] Back in Harrisburg, Appellants alleged, Democratic state legislators were shut out of the legislative process, and their leaders were not even shown the new map until the day before the bill's final passage. *Id.* at 134a-135a.

The complaint then alleged that the new map neglects the traditional districting principles that this Court has identified in its *Shaw* line of cases. Specifically, the complaint alleged that "District 7 is barely contiguous" and that the new districts are "far less compact" than those in the previous plan, which the Pennsylvania Supreme Court established in 1992. *Id.* at 131a-132a, 136a. The complaint specifically highlighted the bizarre shapes of new Districts 6, 8, 12, and 13: "District 6, for example, looms like a dragon descending on Philadelphia from the west, splitting up towns and communities throughout Montgomery and Berks Counties. . . . District 8 includes an ungainly gash that at one point narrows to 300 yards and extends five and a half miles into Montgomery County, nearly splitting neighboring District 13 into two. District 12 snakes through several counties, leaving no fewer than 25 split cities, towns, and boroughs" in its wake. *Id.* at 136a; *see also id.* at 164a-166a (color maps); JA 260 (color map).

Appellants also alleged that respect for political subdivisions took a backseat to partisan maximization, as county splits proliferated and the number of local government units (cities, boroughs, and townships) that were

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[33] *See* Thomas B. Edsall, *Democrats Hold Edge Over GOP in Redistricting; Gains Still Possible for Republicans*, Wash. Post, Dec. 14, 2001, at A55; *see also* Tim Curran & John Mercurio, *A Seat at the Table: Parties Brace for Looming Remaps*, Roll Call, Mar. 19, 1998 ("'[The Democrats] losing three seats sounds like a pretty good plan. . . . I am not going to lie to you. We want to maximize Republican seats.'" (quoting Appellee John Perzel of the Pennsylvania House of Representatives)).

sliced by congressional-district lines increased more than seven-fold from the 1992 map. *See* J.S. App. 132a, 135a. As the complaint stated, "[r]ather than protecting communities of interest, [the new map] fractures them, substituting meandering and irregular lines throughout the state." *Id.* at 135a-136a.

With reapportionment costing Pennsylvania two congressional seats, some pairing of incumbent Representatives was unavoidable. *See id.* at 133a; *see also id.* at 55a. But "rather than preserving the seniority and power of the Pennsylvania congressional delegation [and] thereby enhancing Pennsylvania's clout in Washington," the General Assembly needlessly paired additional incumbents and effectively created Republican-leaning open seats "to replace Democratic members who have seniority with first-term Republicans." *Id.* at 136a.

Appellants' complaint further alleged a causal nexus between these neglected traditional districting principles and the legislature's Republican maximization agenda. *Id.* at 135a. Thus, the complaint alleged more than sufficient discriminatory intent to satisfy even the elevated intent standard that Appellants propose here.

As for discriminatory effects, the complaint alleged that the new map was an "invidious partisan gerrymander[]" that would "consistently degrade[] the votes of Democrat[s]" and "frustrate the will of the majority." *Id.* at 131a, 137a, 140a. The complaint alleged that Pennsylvania is a politically competitive "swing" State where Democrats could be expected to vie for a majority of votes and – barring any significant partisan bias in redistricting – for a majority of congressional seats. In the five most recent statewide races combined, Democrats had averaged 50.1% of the major-party vote, and in the most recent congressional elections (in November 2000) they had garnered 50.6% of the major-party votes cast across the State. *Id.* at 137a-138a.

The complaint then alleged that the new map would prevent a Democratic majority of voters from electing a Democratic majority in the congressional delegation. Partisan manipulation of district lines had "packed" and "cracked" Democrats, giving Republicans an artificial advantage in 13 or perhaps even 14 of the State's 19 districts. *Id.* at 138a-140a. The complaint explained that the map would allow the Republican Party to capture at least twice as many seats as the Democrats, even if the Democratic candidates earned greater popular support statewide. *Id.* In making these allegations, the complaint cited multiple statewide elections, as well as congressional-election returns, and explained that the 13-to-6 pro-Republican "bias will not apply in simply one political election, but will affect every future election under [the new plan], regardless of the political conditions. It cements Republican power and effectively reduces Democrats to being a small minority of the Commonwealth's delegation for the coming election and likely the coming decade." *Id.* at 137a-138a, 140a.

Beyond the quantitative evidence of disparate packing and cracking, Appellants' complaint alleged other practical political effects of the new districting map: "The fact that 13 or 14 districts are now designated as 'Republican districts'" would "dramatically affect[] the Democratic Party's . . . organizing, recruitment of viable candidates, fund-raising, and voter turnout efforts." *Id.* at 141a. In short, the complaint alleged, the new redistricting plan "sends a clear message to the people of Pennsylvania – electing Republicans is more important than the will of the majority." *Id.* at 142a.

B. The Evidence Adduced at Trial Confirmed the Validity of Appellants' Allegations.

Although this Court need only decide whether the facts Appellants alleged in their complaint were sufficient to

survive a motion to dismiss, these allegations were supported by evidence presented to the District Court during the one-person, one-vote trial, where a key issue was what policies had motivated Appellees. Based on that evidence, the District Court specifically found, as a matter of "undisputed fact[]," that Act 34 (like Act 1) "jettisons every . . . neutral non-discriminatory redistricting criteri[on] that the Supreme Court has endorsed." J.S. App. 9a n.3, 12a (citations omitted); *see also id.* at 55a (concluding that "neutral criteria were not high on the [General Assembly's] priority list").

The District Court's findings, *see, e.g., id.* at 54a-55a, were based in part on the testimony of Appellants' expert, Professor Allan J. Lichtman. JA 28-117. Using two standard mathematical measures of district shape, Professor Lichtman confirmed that the new plan was substantially less compact than its predecessor (which the Pennsylvania Supreme Court had ordered into effect in 1992). *Id.* at 57-59, 91-92, 266-67. Furthermore, maps and exhibits introduced into evidence at trial showed that the new boundary lines separating Republican districts typically were smooth and fell neatly along county or municipal borders, while boundary lines defining Democratic districts tended to be ragged and disrespectful of political subdivisions, as they sliced surgically into specific cities to extract Democratic-leaning precincts from their Republican-leaning neighbors. *Id.* at 261, 266; J.S. App. 164a-166a (color maps). And roughly three-fourths of the municipalities split by the new map were divided between Democratic districts and Republican districts. *See* J.S. App. 154a-157a; JA 167-70, 261.

To assess the partisan composition of each of the 19 new districts, Professor Lichtman also analyzed (on a district-by-district basis) the results of all 18 statewide contests for single-member offices (*e.g.*, President, U.S. Senator, governor, treasurer, etc.) held in the previous decade. JA 32-

37, 44-45, 107. The major-party vote in the average district split almost exactly 50-50. *Id.* at 35. But 14 of the districts leaned Republican while only 5 leaned Democratic. *Id.* at 36-37, 261, 265. The three least competitive districts in the State (Districts 1, 2, and 14) were all overwhelmingly packed with Democrats (averaging 77%, 82%, and 66% Democratic, respectively). *Id.* at 261.

The record evidence also shows the distribution of Democratic and Republican votes in *each* of the 18 statewide contests, taken separately. *Id.* at 273-76. In the six closest contests, all of which were narrow Republican victories in which the Democratic candidate lost by less than three percentage points, the Republican candidate would have carried 13 or 14 of the new districts each time, while the Democratic candidate would have carried only 5 or 6 districts. *See id.* at 274, 276.

Tellingly, a consistent pattern can be found in *every one of the 18 statewide contests* over the previous decade, including close contests and landslides alike. *See id.* at 273-76. In every one of these 18 contests, a sizable majority of the newly created districts were more Republican than the average district, while only a small minority of the new districts were more Democratic than average – indeed, heavily packed with Democratic voters. *See id.* When applied to the new districts, not one of these 18 contests revealed a pattern in which at least 10 of the 19 districts – or even 9 of the 19 – were more Democratic than the average district. *See id.*[34] This pattern strongly suggests that, wholly aside from any inequitable treatment of one party's

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[34] In two contests (the 1992 races for President and for treasurer), 11 districts were more Republican than average and 8 districts were more Democratic than average. *See* JA 274, 276. In five contests, the ratio was 12 to 7; in six contests, it was 13 to 6; and in five contests, it was 14 to 5. *See id.* at 273-76.

incumbents, the Pennsylvania plan is slanted to favor Republicans in a supermajority of districts. As explained earlier, this consistent pattern demonstrates the kind of systematic packing and cracking of one party's voters that can consistently thwart majority rule.

Professor Lichtman also showed that the new plan's disparate treatment of Pennsylvania's congressional incumbents would *exacerbate* the plan's underlying partisan bias. *Id.* at 48-51, 77. Two Democratic incumbents (Coyne and Doyle) were paired in the Pittsburgh area in District 14, and another two (Borski and Hoeffel) were paired in the Philadelphia area in District 13. *Id.* at 261. In southwestern Pennsylvania, two more Democrats (Mascara and Murtha) were effectively paired (and indeed ended up running against each other in the Democratic primary) in District 12, although Mascara lived one block beyond the district's perimeter. *Id.* at 51, 124-27, 170. And District 17, which leaned heavily Republican, was home to one incumbent from each party (Democrat Holden and Republican Gekas). *Id.* at 261, 265. All together, 7 of the 10 Democratic incumbents – but only 1 of the 11 Republican incumbents – were effectively paired.

This pattern was not offset by the creation of Democratic-leaning open seats. *Id.* at 51-52. Instead, the two open seats (Districts 6 and 18) were both designed to favor specific Republican state senators. *Id.* at 124-26, 133-34, 167-70; *see also id.* at 261. Indeed, as a color map revealed, *id.* at 260, District 18 consists of two noncontiguous land masses, hooked together by the entire former state senate district of Tim Murphy, who (not surprisingly) now represents District 18 in Congress.

In addition to incumbent pairings, Professor Lichtman's testimony highlighted the disparate "shifting" of incumbents' constituents. *Id.* at 53-57. The new map preserved most of the core of each Republican incumbent's district. *Id.* at 272.

By contrast, half a dozen Democratic incumbents were placed in districts where most constituents would be new to them. *Id.* On average, Democratic incumbents were placed with twice as many new constituents as were Republican incumbents. *See id.*

Finally, Professor Lichtman analyzed three alternative maps that Appellants introduced. *Id.* at 37-38, 52-55, 58-61, 262-68. When compared with the map Appellants were challenging, each alternative plan was more compact by any measure, broke fewer counties and municipalities, was substantially less biased (in terms of packing and cracking), and was far more evenhanded in its treatment of incumbents. *See id.* Thus, the partisan bias in the challenged plan flowed neither from respect for traditional districting principles nor from any unavoidable "natural" distribution of Democratic and Republican voters across the Commonwealth.

C. The 2002 Election Returns

The November 2002 election data, on which Appellees placed great reliance in their motions to affirm, were of course unavailable at the March 2002 trial and are not in the record below; but in any event, they confirmed the bulk of Appellants' allegations. As for the paired Democrats, Congressmen Borski and Coyne of Districts 13 and 14, respectively, chose to retire rather than face a fellow Democrat in a primary contest. Congressman Mascara soldiered on, but lost to Democratic Congressman Murtha in the District 12 primary. And in District 17, Congressman Holden carried 51% of the vote and scored an upset victory over Republican Congressman Gekas, who put in what two local political scientists politely termed "a less than able performance as a campaigner."[35] In the two open seats

[35] Stephen K. Medvic & Matthew M. Schousen, *The 2002 Pennsylvania Seventeenth Congressional District Race*, in *The Last Hurrah?* 291, 297 *continued*

(Districts 6 and 18), the anointed Republican state senators (Gerlach and Murphy, respectively) prevailed as expected. Overall, Republicans gained a 12-to-7 advantage in Pennsylvania's congressional delegation, as three Democratic incumbents were forced out of office.

All told, the Republican candidates won in 12 of the 13 districts predicted by Appellants. This was true even though the Democratic gubernatorial candidate at the top of the ballot won the only statewide race in 2002 by more than nine percentage points. In 10 of the 12 districts that Republicans won, the Republican congressional candidate took at least 60% of the total vote, underscoring how the new districting plan has entrenched an artificial Republican majority. As long as those 10 districts are locked into the Republican column, Democrats of course can never capture a majority of seats statewide. Yet Democrats could not have won any of these 10 districts even if they had done 10 points better (and Republicans had done 10 points worse) in every precinct in the State.

The evidence summarized here merely confirms what any astute observer of Pennsylvania politics would concede: Act 34 is an intentional and extremely effective partisan gerrymander that ignored every traditional redistricting principle in an effort to minimize one political party's opportunities and guarantee the upper hand to the other

(David B. Magleby & J. Quin Monson eds., 2003); *see id.* ("[T]he Gekas loss was the result of 'a candidate rusty from years of easy re-election wins and out of touch with changing constituencies; a bitter division between Gekas and the team brought in to help him; and a strategy that careened futilely from one tack to another.'" (quoting Brett Lieberman, *What Went Wrong?*, Harrisburg Patriot-News, Nov. 7, 2002, at A1)); *Almanac*, *supra* note 2, at 1406 (recounting that Gekas "was slow to learn modern campaign techniques"); *see also id.* (reporting that, after Holden's victory, national Republican leaders immediately designated him "a prime target for 2004").

party. If Act 34 is not a partisan gerrymander, then nothing is.

CONCLUSION

Democracy requires majority rule. Severe partisan gerrymanders, like the Pennsylvania plan at issue here, stand democracy on its head by promising to invert popular minorities into governing majorities. Accordingly, the Court should reverse the judgment below and remand the case to the three-judge District Court for further proceedings.

Respectfully submitted,

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No. 02-1580

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD VIETH, et al., *Appellants,*

v.

ROBERT C. JUBELIRER AND JOHN M. PERZEL, et al., *Appellees.*

On Appeal from the United States District Court for the Middle District of Pennsylvania

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BRIEF OF APPELLEES

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QUESTIONS PRESENTED

1. Should a three-judge court's dismissal of a claim for partisan gerrymandering for failure to allege the "actual discriminatory effect" required by the plurality in *Davis v. Bandemer*, 478 U.S. 109 (1986), be summarily affirmed, when it is consistent with the decision in *Bandemer* and with the decisions of other three-judge courts, many of which have been summarily affirmed by this Court?

2. Is a claim that a congressional redistricting plan established by state law will elect a disproportionate number of representatives from one political party non-cognizable under U.S. CONST. art. I, §4?

3. As an alternative basis for affirmance, should this Court hold that voters who prefer the candidates of one party, in a state where voters frequently and massively engage in cross-over and split-ticket voting, cannot be considered an "identifiable political group" for purposes of asserting a partisan gerrymandering claim under *Davis v. Bandemer*, 478 U.S. 109 (1986)?

4. As an alternative basis for affirmance, should this Court reconsider and overrule its decision in *Davis v. Bandemer*, 478 U.S. 109 (1986), that a claim of partisan gerrymandering presents a justiciable political question?

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COUNTERSTATEMENT OF THE CASE

A. Background: Pennsylvania Politics in 2001

Pennsylvania's congressional seats dropped from 21 to 19 after the 2000 Census. When census data were released in 2001, the Pennsylvania General Assembly considered redistricting legislation. At that time, both state houses had Republican majorities. Appellee Robert C. Jubelirer, a Republican, was elected to what would be his 15th year as Senate President *pro tempore*. A Republican was in his 7th consecutive year as House Speaker.[1] THE PENNSYLVANIA MANUAL 3-269, 3-270, 3-273 (115th ed. 2001). A Republican had been Governor since 1995. *Id.* at 4-20. Both U.S. senators and a majority of the U.S. House delegation were Republican. *Id.* at 8-11. In 2001, all statewide executive offices, with one exception, were held by Republicans. *Id.* at 7-22 – 7-24. Republicans achieved this prominence through successive wins in elections where gerrymandering was not at issue.[2]

For example, in 1998, Republicans won both statewide elections with large margins: U.S. Senator (61%) and Governor (57%). Jurisdictional Statement ("JS") at 85a.[3]

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[1] Speaker Matthew J. Ryan died in March 2003. His successor is appellee John M. Perzel. Jubelirer and Perzel are the "Presiding Officers" elected by their respective houses.

[2] Statewide offices cannot be gerrymandered. The General Assembly's districts are drawn by a bipartisan commission that tries to make districts compact and contiguous, without splitting political subdivisions. PA. CONST. art II, §16. No such restriction is placed on drawing congressional districts.

[3] Appellants' Jurisdictional Statement reprints *Erfer v. Cmwlth. of Pennsylvania*, 794 A.2d 325 (Pa. 2002), the Pennsylvania Supreme Court's decision in a parallel case. *Erfer* includes "Recommended Findings of Fact and Conclusions of Law" by Commonwealth Court Judge Pellegrini. JS 77a-109a. The *Erfer* Court did not adopt them, ruling the evidence

In 2000, Republicans won 60% of the statewide races. JS 86-87a, 137-38a. Republican U.S. Senator Rick Santorum won by a bigger percentage (52.4%) than Vice-Pres. Gore (50.6%). *Id.* The Republican Attorney General not only won by a bigger percentage than Mr. Gore but also received more votes. *Id.*

In 2000, Republicans also won a majority of the state's congressional seats, although Democrats received a slight majority (50.04%) of total votes. STATISTICAL ABSTRACT OF THE U.S.: 2001 (U.S. Census Bureau 121st ed.) ("Abstract"), Tables 385 & 386. Two years earlier Democrats won a majority, even though Republicans got 50.8% of the vote. *Id.* The 2000 elections were run using 1992 court-drawn districts. *See Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992).

In the 2001 elections, just as the General Assembly took up redistricting, Republicans won all 7 open seats on statewide appellate courts with 54% of the total vote, JS 87a, despite Democrats having 500,000 more registered voters. In 2001, Pennsylvania's registered voters were 48% Democrat, 41.6% Republican and 10.3% other. JS 84a.

In 2001, the Democrat Party was a major, although not *majority*, party in Pennsylvania. With its registration plurality, it could have won control of statewide offices and the General Assembly. But voters in Pennsylvania frequently and massively engage in cross-over and split-ticket voting. E.g., since 1956, in 6 out of 8 elections with presidential and Senate races on the same ballot, candidates of different parties won. *See Pennsylvania: Ticket Splitting Is Not a Recent Voting Phenomenon,* Center for Politics &

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insufficient to support relief. JS 76a n.5. However, the findings contain judicially noticeable statistics (e.g., census and election data) and are an easy reference for the Court. Presiding Officers cite the findings only for objective and noticeable data.

Public Affairs, Millersville University (2002) (www.muweb.millersville.edu/~politics/ticketsplitting.htm) (visited 10/8/03).[4]

B. Redistricting Legislation in Pennsylvania

Congressional redistricting legislation, Senate Bill ("SB") 1200, was introduced on Nov. 16, 2001. The bill had to eliminate 2 seats and reallocate population after a decade of population decline in the 2 largest cities (Pittsburgh & Philadelphia) and population growth in suburban counties around Philadelphia and in the Poconos. *See* JS 83-84a. The bill also had to preserve majority-minority districts in Philadelphia. *See Mellow v. Mitchell.* Protecting the dean of the delegation was also important. The General Assembly ultimately achieved these purposes.

The Legislative Journal shows that members in each house debated a wide variety of issues.[5] SB 1200 passed the Senate on a near party-line vote but was not so favored in the House, where it was amended before passing with strong bipartisan support. After resolving differences, both houses adopted SB 1200. Forty-two House Democrats voted in favor of SB 1200.[6] JS at 89a. The Governor signed SB 1200 into law as Act 2002-1 ("Act 1") on Jan. 7, 2002.

Of the 19 new districts, 7 had a majority of registered Republicans, 7 had a majority of registered Democrats, 3 had a plurality of registered Republicans and 2 had a plurality of registered Democrats. JS 90-91a. Act 1 was

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[4] In the 2 elections where the same party's candidates won for President and Senator, Republicans won. In 5 of the 6 split-ticket elections, the winning Senate candidate was Republican.

[5] The legislative history of SB 1200 is reproduced in the Lodging Material ("LM") at 31-52, 61-78, 82-90, 93-103.

[6] The bill needed 102 votes to pass the House. PA. CONST. art. III, §4. Enough Republicans opposed SB 1200 to require Democrat support to pass it. *See* LM 88, 196-221.

used in the 2002 elections but was then superceded by Act 2002-34 ("Act 34"), which made minor alterations in district boundaries to equalize population.[7]

C. Pennsylvania Elections After Redistricting

In 2002, a Democrat won the governorship, defeating the Republican Attorney General who 2 years earlier had received more votes than Vice-Pres. Gore. The Democrat candidate for Governor also set a Pennsylvania record for campaign fund raising.[8] But he had no coattails. Under the bipartisan commission's plan for the General Assembly, Republicans in 2002 got 52.5% of the vote for the state House, winning 109 of the 203 seats. *See* 2002 Official Election Results ("2002 Election Results"), Pa. Dept of State (www.dos.state.pa.us/DOS/site/default.asp) (visited 10/8/03). Republicans won 60% of 25 state Senate seats up for election, with 51.5% of the vote. *See id.*

In the 2002 congressional races, under the allegedly biased plan, Republicans won 56% of the vote and 63% of the seats.[9] *Id.* But, in the 17th, a senior Republican incumbent lost to a Democrat incumbent and, in the open seat in the new 6th, the Republican won by less than 6,000

[7] The district court upheld Act 34, but stated in dictum, without trying the facts, that Act 34 disregarded all other neutral districting criteria. JS 9a.

[8] Sullivan & Cattabiani, *Rendell's Old Foes Become Donors*, PHILA. INQUIRER (Feb. 1, 2003) A01.

[9] The candidate in the 10th was the nominee of both parties but is here listed (and serves) as a Republican. If listed Democrat, the outcome was: Republicans 51.6% of the vote, 57.9% of the seats. *See* 2002 Election Results. No Democrat ran in 4 districts, including the 3rd with its majority of registered Democrats. *Id.* The Republicans left only the 14th uncontested. *Id.*

votes. *Id.* No Democrat incumbent was defeated.[10]

D. The Amended Complaint

1. Undefined "Democratic voters"

Appellants did not allege that they, as individuals, were hindered by Act 1 from voting, organizing or exercising any political rights, nor that they would be unable to elect candidates of their choice in their districts of residence. Rather, they alleged that "Democratic voters" would be harmed because Democrats could not win a majority of districts despite constituting, by an unspecified measure, a "small majority" of Pennsylvania voters. *See* JS 139-40a.

The Complaint appeared to define "Democratic voters" by the results of the Bush-Gore race in Pennsylvania in 2000, citing Vice-Pres. Gore's win with 50.6% of the votes. JS 137a; *see* Appellants' Br. at 6 n.9. Yet, the Complaint also cited election data showing massive cross-over voting in Pennsylvania, such that, on the same election day, Republicans won 60% of statewide races and a Republican state Attorney General received more votes than Mr. Gore. *Id.* It is impossible to deduce whether "Democratic voters" are the majority voting for Mr. Gore or the even larger majorities voting for 2 statewide Republican candidates.[11]

The Complaint also did not state where members of the group of "Democratic voters" reside, whether they are uniformly dispersed throughout the state or whether they reside disproportionately in one or more areas, such as Pennsylvania's large cities. The Complaint did not define

[10] An incumbent Democrat who lived in the 18th chose to oppose a incumbent Democrat in the 12th and was defeated in the primary. A representative need only be a state inhabitant, *see* U.S. CONST. art. I, §2, so a candidate may run in any district.

[11] Comparing the positions of Vice-Pres. Gore and Sen. Santorum would, we think, show a chasm between them on "hot-button" issues, such as abortion and guns. *See* n.21 below.

"Democratic voters" by some immutable characteristic such as race. Indeed, since Appellants sought to define a group by its political preferences, the characteristics of the group were inherently mutable, as shown by the disparate election results cited in the Complaint. The Complaint also did not define "Democratic voters" by an objectively identifiable criterion, such as voter party registration.

The Complaint did not identify a cognizable group, much less a cohesive group.

2. Political gossip and legal conclusions

Appellants did not allege legislative history to show intent to engage in partisan gerrymandering but instead cited media reports and political gossip, *see e.g.*, JS 133-34a, from which they formulated conclusions of law about legislative intent.[12] The Complaint characterizes the legislative process as one where Democrat state legislators "were shut out." JS 134a. But the Legislative Journal shows vigorous debate on plan details both in the House (where over 40% of Democrat members voted for it over the opposition of their caucus leader) and in the Senate (where *amicus* Sen. Mellow detailed his view of the plan's defects). *See* LM 61-78, 82-88 (House), 101-02 (Senate).

E. Colorful But Inaccurate Characterizations

Appellants' Brief is full of hyperbole, insinuation and colorful verbiage, but the simple facts are otherwise. For example, Appellants say that state legislators, "armed with the supercomputer facilities at Carnegie Mellon University, sacrificed every traditional districting principle – slashing through municipalities and neighborhoods, splitting counties and producing oddly misshapen districts, especially where Democratic voters are concentrated."

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[12] A court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

Appellants' Br. at 12. But there is nothing in the record of how or even whether a "supercomputer" was used to aid the General Assembly or its members in redistricting.[13]

Moreover, Pennsylvania has 2,636 local governments (counties, cities, townships, boroughs, town). *See* JS 84a. Under Act 1, only about 3% of local governments were split between 2 or more congressional districts. *See* JS 84a, 97a. Pennsylvania also has 501 school districts, numerous special units of government and a plethora of municipal authorities, whose jurisdictions often overlap or intersect local government boundaries. Pennsylvania has more general and special purpose units of government than probably any other state. Patterns of growth do not respect these artificial jurisdictional boundaries.

In their Brief, Appellants characterize the districts' shapes but do not base their colorful descriptions on any findings below. While in the one-person, one-vote trial, over objection, the district court allowed Appellants to present testimony on partisan issues from a congressman (Mascara), a Democrat media pundit (Ceisler) and a political scientist (Lichtman), the court did not adopt either the methodology or the opinions of these witnesses and made no findings as to their credibility.[14]

F. Appellants' Flawed Predictions and Analysis

The Complaint predicted Act 1 would "likely result in a

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[13] Appellants subpoenaed documents concerning a contract between the House Republican Caucus and Carnegie Mellon Univ. Over objection that it violated legislative privilege, this discovery was allowed. The documents produced were not used at trial. The privilege issue is before the Court in *Republican Caucus v. Vieth*, No. 03-371 (Petition for Writ of Certiorari).

[14] These witnesses were rebutted by Appellees' witnesses. *Cf.* Ceisler testimony (JA 117-60) with Hallowell (JA 223-59) & Lichtman testimony (JA 28-117) with Brunell (JA 185-222).

congressional delegation consisting of 13 Republicans and 6 Democrats." JS 138a. Also predicted were various dire effects on the Democrat Party's ability to raise money and recruit candidates. JS 141a. These predictions, as shown above, were wrong.

At the one-person, one-vote trial, Appellants introduced tables showing how votes in 2000 for statewide candidates would have been allocated among the 19 new districts. Joint Appendix ("JA") at 273-74.[15] The tables show that:

- voters in 4 districts gave majorities to both a Democrat for President and a Democrat for U.S. Senator;
- voters in 9 districts gave majorities to Republicans both for President and for U.S. Senator;
- voters in 0 districts gave majorities to both a Democrat for U.S. Senator and Republican for President;
- voters in 6 districts (the 6th, 7th, 8th, 11th, 13th & 15th) gave majorities to both a Democrat for President and a Republican for U.S. Senator.

The last statistic, showing that Vice-Pres. Gore and Sen. Santorum achieved majorities in the same 6 districts indicates that, with good candidates and effort, the Democrat Party could take all of these districts and, with its 4 Democrat-Democrat districts, get a majority of the congressional seats. In addition, since a Democrat won in a supposedly Republican district (the 17th) and a Republican won in a district with a majority of Democrat-registered voters (the 4th), *see* JS 92a, 95a, Democrats could plausibly capture 12 seats in a future election, reducing Republican seats to 7 and reversing what happened in 2002.

SUMMARY OF ARGUMENT

Pennsylvania's redistricting statute is not an extreme

[15] The tables were admitted, but the district court made no findings about them; nor did it have to, as the only issue before it was Act 1's compliance with one-person, one-vote.

partisan gerrymander. Appellants failed to state a claim under *Davis v. Bandemer*, 478 U.S. 109 (1986), as they could not show they had suffered individual harm to their voting rights or that they were members of an identifiable group. The *Bandemer* standard should not be relaxed. Alternatively, the claim is nonjusticiable.

ARGUMENT

I. APPELLANTS' CLAIM FAILED TO MEET THE *BANDEMER* PLURALITY'S STANDARD

A. The *Bandemer* Plurality's Standard

In *Bandemer* a state-legislative redistricting plan was alleged to violate the Equal Protection Clause because it "discriminate[d] against Democrats on a statewide basis." 478 U.S. at 127. After the Court resolved justiciabilty, a plurality concluded that, in order to state a claim for partisan gerrymandering, the plaintiffs had to show "[1] intentional discrimination against [2] an identifiable political group and [3] an actual discriminatory effect on that group." *Id.* at 127 (citing *Mobile v. Bolden*, 446 U.S. 55, 67-68 (1980)). This threshold standard *is* difficult to meet, as the plurality intended:

> [T]he mere fact that a particular apportionment scheme makes it more difficult for a particular group in a particular district to elect the representatives of its choice does not render that scheme constitutionally infirm. This conviction, in turn, stems from a perception that the power to influence the political process is not limited to winning elections. An individual or a group of individuals who votes for a losing candidate is usually deemed to be adequately represented by the winning candidate and to have as much opportunity to influence that candidate as other voters in the district. ... Thus, a group's electoral power is not unconstitutionally diminished by the simple fact of

> an apportionment scheme that makes winning elections more difficult, and a failure of proportional representation alone does not constitute impermissible discrimination under the Equal Protection Clause.

478 U.S. at 131-32 (citing *Mobile*, 446 U.S. at 111 & n.7) (Marshall, J., dissenting)); *see also id.* at 132 n.12 ("elements necessary to a successful vote dilution claim may be more difficult to prove in relation to a claim by a political group"). Given the constant admonition that "legislative reapportionment is primarily a matter for legislative consideration and determination," *Reynolds v. Sims*, 377 U.S. 533, 586 (1964), the *Bandemer* plurality had good reason to set the standard high:

> Inviting attack on minor departures from some supposed norm would too much embroil the judiciary in second-guessing what has consistently been referred to as a political task for the legislature, a task that should not be monitored too closely unless the express or tacit goal is to effect its removal from legislative halls. We decline to take a major step towards that end which would be so much at odds with our history and experience.

478 U.S. at 133-34. To argue that the *Bandemer* standard should now be discarded because it is difficult to meet ignores the reasoning that intentionally set the bar high.

Instead of treating it as *malum in se*, the Court has even *relied* on partisan gerrymandering as a basis to uphold a redistricting plan. *See Easley v. Cromartie*, 532 U.S. 234 (2001) (primary intent to gerrymander on a partisan basis defeats claim that a district was racially gerrymandered).

The threshold for partisan gerrymandering claims, as the plurality noted, 478 U.S. at 131 n.12, reflected the standard, used to assess vote dilution claims under the

Equal Protection Clause, "that [a] State has enacted a particular voting scheme as a purposeful device 'to minimize or cancel out the voting potential of racial or ethnic minorities[.]'" *Miller v. Johnson*, 515 U.S. 900, 911 (1995) (quoting *Mobile*, 446 U.S. at 66, in explaining the difference between equal protection claims of racial gerrymandering and racial vote dilution).

1. Requirement: intentional discrimination

The *Bandemer* plurality noted only that redistricting "is intended to have substantial political consequences" and, therefore, "[a]s long as redistricting is done by a legislature, it should not be very difficult to prove that the likely political consequences of the reapportionment were intended." 478 U.S. at 129. Intent to discriminate on a partisan basis was not suspect but expected by the *Bandemer* plurality. *See id.* at 128-29; *see also White* v. *Weiser*, 412 U.S. 783, 795-96 (1973) ("Districting inevitably has sharp political impact and inevitably political decisions must be made by those charged with the task."). *Bandemer* did not discuss the means of proving legislative intent, a serious problem discussed below.

2. Requirement: identifiable group

The *Bandemer* plurality did not discuss the "identifiable group" requirement. But whether a group is identifiable may be ascertained by considering the underpinnings of an equal protection claim and decisions exploring equal protection claims brought by groups.

Basic to an equal protection claim are allegations of government action treating similarly-situated classes of individuals differently. *See e.g., City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985). The "identifiable group" requirement in *Bandemer* equates to the class in an equal protection case. In the racial vote dilution cases relied on by the *Bandemer* plurality, the disadvantaged group was identifiable because the race of

voters in a district was known and the results in the precincts where minority voters predominated showed they tended to vote for the same candidates election after election while white voters tended to vote differently. *Cf. Rogers v. Lodge*, 458 U.S. 613, 616 (1982). In other words, there was no difference in treatment as to any right to vote unless there were enough individual voters *of the claimants' race* in a geographic area who preferred the same candidate *and* enough individual voters *not of the claimants' race* who preferred a different candidate such that the claimants' preferred candidate usually lost.

A connection between the group and the claimed discrimination is crucial to identifying a disadvantaged group. In *Gordon v. Lance*, 403 U.S. 1 (1971), the Court upheld a state law restricting political subdivisions from incurring bonded indebtedness or increasing tax rates beyond set limits without obtaining approval of 60% of the voters in a referendum. When a referendum to increase indebtedness and levy additional taxes was defeated even though 51.5% voted for it, disappointed voters sought a declaratory judgment that the 60% requirement violated their right to equal protection by diluting their vote. They alleged that 4 similar referenda had also been defeated, even though majorities ranging from 52.51% - 55.84% had voted for an increase. The Court affirmed dismissal because it could "discern no independently identifiable group or category that favors bonded indebtedness over other forms of financing [and] [c]onsequently no sector of the population may be said to be 'fenced out' from the franchise because of the way they will vote." *Id.* at 5.

Similarly, in *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973), plaintiffs, citing the disparity of the property tax basis among school districts, claimed that the Texas school finance system violated equal protection. The Court disagreed with the lower court's

conclusion that the local property tax system discriminated on the basis of wealth, chiding it for "ignor[ing] the hard threshold questions, including whether it makes a difference … that the class of disadvantaged 'poor' cannot be identified or defined in customary equal protection terms[.]" *Id.* at 19. The Court noted, *id.* at 22-23, that

> appellees have made no effort to demonstrate that [the system] operates to the peculiar disadvantage of any class fairly definable as indigent, or as composed of persons whose incomes are beneath any designated poverty level. Indeed, there is reason to believe that the poorest families are not necessarily clustered in the poorest property districts.

Also, *Growe v. Emison*, 507 U.S. 25 (1993) (where the Court extended *Thornburg v. Gingles*, 478 U.S. 30 (1986), to single-member districts) provides insight on the nature and importance of the "identifiable group" requirement. As stressed in *Growe*, 507 U.S. at 40-41 (citations omitted):

> The 'geographically compact majority [of minority voters]' and 'minority political cohesion' showings are needed to establish that the minority has the potential to elect a representative of its choice in some single-member district, [a]nd the 'minority political cohesion' and 'majority bloc voting' showings are needed to establish that the challenged districting thwarts a distinctive minority vote by submerging it in a larger white voting population. Unless these points are established, there neither has been a wrong nor can be a remedy.

The three-judge court in *Martinez v. Bush*, 234 F. Supp.2d 1275 (S.D. Fla. 2002), applied the *Gingles*[16]

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[16] N.B. that *Gingles* was a case under §2 of the Voting Rights Act of 1965, 42 U.S.C. §1973, as amended after *Mobile*.

conditions to a claim that Florida's congressional districts discriminated against Democrat voters and explained why those requirements were encompassed within *Bandemer*'s "identifiable group" requirement:

> The reality of American politics is that 'voters sometimes prefer Democratic candidates, and sometimes Republican,' without regard to the party affiliation noted on their voter registration cards. [Bandemer, 478 U.S.] at 135. ... As Justice Stevens recognized in his concurrence to [Mobile v.] Bolden, 'it is only when common interests are strong enough to be manifested in political action that the need [for protection] arises. For the political strength of a group ... is a function of numbers–specifically the number of people who will vote in the same way.' In the political gerrymandering context, the best evidence of political identity will thus necessarily consist of proof of bloc voting and political cohesiveness. These factors are the 'glue' that binds together voters and makes them an identifiable political group.
>
> As with claims of racially polarized voting, establishing politically polarized voting requires both a showing of political cohesiveness among members of the minority political group and a showing of bloc voting by the majority group.

Appellants' claim is not statutory but constitutional. *Gingles* may provide a useful analogy for identification of a group but it does not define a constitutional claim for racial vote dilution, much less for partisan gerrymandering. *Gingles* set conditions for a §2 claim, that a minority group: (1) "is sufficiently large and geographically compact to constitute a majority in a single-member district," (2) "is politically cohesive," and (3) that "the white majority votes sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate." 478 U.S. at 50-51.

> These elements, in turn, may most easily be established by a showing that the members of each group tend to vote for the same candidate and that the candidate supported by each group is different from that supported by the other. This examination requires evidence of cohesiveness and bloc voting over some significant period . . . and may not be satisfied merely with proof of the minority party's actual or predicted loss in a single election.

Id. at 1336-37 (selection citations and footnotes omitted).

As post-*Bandemer* precedent clarifies, a partisan gerrymandering claim requires an "identifiable group" exhibiting political cohesion of, and bloc voting by, the individual members of the group *and* bloc voting by the remaining voters against candidates for which the allegedly disadvantaged group votes as a bloc. While this standard is not insuperable in racial vote dilution cases, it is necessarily much more difficult in partisan gerrymandering cases. The difference arises from the fact that race is an immutable and observable characteristic, while partisan preference is highly mutable and unattributable to individual voters comprising a putative group.

3. Requirement: actual discriminatory effect

Bandemer's third requirement of actual discriminatory effect requires a plaintiff to show that "the electoral system is arranged in a manner that will consistently degrade ... a group of voters' influence on the political process as a whole." 478 U.S. at 132. A "mere lack of proportional representation will not be sufficient to prove unconstitutional discrimination" because an equal protection violation occurs only where "a history of disproportionate results appear[s] in conjunction with strong indicia of lack of political power and the denial of fair representation." *Id.* at 132, 139. The plurality refused to presume that "those who are elected will disregard the

disproportionately underrepresented group," explaining that "unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole." *Id.* at 132. The plurality both distinguished and analogized vote dilution in an individual district and statewide, stressing the principles that would guide its analysis, *id* at 133:

> [A]s in individual district cases, an equal protection violation may be found only where the electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively. In this context, such a finding of unconstitutionality must be supported by evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.

Justice White revisited the actual discriminatory effects requirement in *Shaw v. Reno*, emphasizing its importance:

> Because districting inevitably is the expression of interest group politics, and because 'the power to influence the political process is not limited to winning elections,' [Bandemer] at 132, the question in gerrymandering cases is 'whether a particular group has been unconstitutionally denied its chance to effectively influence the political process,' id. at 132-133. Thus, 'an equal protection violation may be found only where the electoral system *substantially disadvantages certain voters in their opportunity to influence the political process effectively.*' Id. at 133 (emphasis added). By this, I meant that the group must exhibit 'strong indicia of lack of political power and the denial of fair representation,' so that it could be said that it has 'essentially been shut out of the political process.'

509 U.S. 630, 662-63 (1993) (White, J., dissenting).

The *Bandemer* plurality explicitly drew the requirement of actual discriminatory effect from prior decisions involving claims by racial groups that their ability to elect representatives of their choice had been negated or lessened by an electoral process. *See* 478 U.S. 132-33. The "indicia" of lack of political power and the denial of fair representation necessary to meet this requirement as developed in those decisions help in evaluating whether discriminatory effects have been alleged against an identifiable group in a partisan gerrymandering case.

B. Application Of The *Bandemer* Standard Here

1. Application: intentional discrimination

The district court summarized the allegations of the Complaint as: "the Republican majority ... prevented all Democratic input on Act 1 in order to establish a Republican super-majority in Pennsylvania's congressional caucus" and found the allegations "sufficient to satisfy [the] pleading requirement." JS 33a. The district court ignored legislative privileges in reaching this conclusion.

Allegations going to the state of mind of individual, or even a sub-group of, legislators have no place in determining the intent of the legislative body that passed the challenged measure.[17] *See Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 130-31 (1810) (explaining it is not consonant with the American scheme of government for a court to inquire into legislators' motives); *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951) ("claim of an unworthy purpose does not destroy the [common law legislative] privilege"); *cf. United States v. O'Brien*, 391 U.S. 367, 383-84 (1968) ("[i]nquiries into congressional motives or purposes are a

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[17] Many redistricting cases, including this one, bring assertions of the common law legislative privilege. *See Republican Caucus v. Vieth*, No. 03-371 (Petition for Writ of Certiorari).

hazardous matter"). Courts do not inquire into the internal workings of the legislative body to determine the quantity or quality of consideration the body or any individual legislator gave to the measure. *See Marshall Field & Co. v. Clark*, 143 U.S. 649 (1892); *Moore v. Magee*, 85 Pa. 401 (1877). Therefore, an allegation that members on one side of the aisle were "shut out" cannot be proven in court because the means of proof (e.g., summoning legislators as witnesses) would violate legislative privilege and the Enrolled Bill Doctrine. Any other rule would invite a replay of the legislative process in court, with legislators and interested parties complaining about legislative procedures and asking judges to pry into the reasoning and influences affecting each legislator's vote.

Since state legislatures have a direct role in congressional redistricting under U.S. CONST. art. I, §4, *see* below, their enactments deserve as much deference as an act of Congress and their deliberations are entitled to the same privileges. The district court should have ignored the allegation that Democrats were "shut out" of the enactment process in assessing the Complaint's sufficiency.[18]

2. Application: identifiable group

The district court found that Appellants had alleged an identifiable group. This finding was erroneous and dismissal should be affirmed here on the alternative basis that Appellants failed to allege an identifiable group.

First, the allegations do not even satisfy what the district court identified as necessary to meet the identifiable group requirement. Plaintiffs are registered Democrats

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[18] In any event, the allegation was false. Democrat input included public hearings, *see* LM 222-23 (letter submitted by Democrat Congressman Mascara during public hearing on congressional redistricting), and Democrat legislators debated and voted both for and against the plan. *See* LM 9-110.

living in only 2 of the state's new 19 congressional districts.[19] JS 129a. The Complaint does not allege that Plaintiffs vote for Democrat candidates, just that they are registered Democrats. Nor does the Complaint allege anything about the geographic distribution of registered Democrats or Democrat voters. *See* JS 128-44a.

Second, although the Complaint did allege the results of the 2000 elections, that allegation can hardly be viewed as showing that an identifiable group of voters who vote Democrat, or Republican, even exists in Pennsylvania. Rather, those results show significant cross-over voting. If the voters who voted Democrat for President always voted Democrat, Republican Attorney General Fisher could not have gotten more votes, and Republican Sen. Santorum a higher percentage, than Vice Pres. Gore did on the same day. The Complaint itself shows that many "Democrat voters" were simultaneously "Republican voters."

Moreover, the Complaint is silent on issues often touted as the difference between Democrats and Republicans, perhaps because, on hot-button issues, the 2000 candidates defied classification by party platform. For example, the Republican Treasurer was "pro-choice," while the

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[19] Despite living in only 2 districts, Appellants challenged all districts. As in *United States v. Hays*, 515 U.S. 737 (1995), however, individuals not resident in a challenged district can show no individualized harm and therefore lack standing. Appellants did not allege that their districts are gerrymandered or that, *see* below, they suffered any individualized harm. Thus, the district court's finding of standing was based on faulty reasoning. *See Larios v. Perdue*, No. 1:03-CV-693-CAP (Mem. Op. at 46 n.11 (Aug. 29, 2003) (unpub., available on PACER) (*Hays* applies to partisan gerrymandering and *Vieth* creates an "anomalously more lenient standard for standing to assert a political gerrymandering claim than applies in ... a racial gerrymandering claim").

Democrat Auditor General was "anti-choice." Both won. The 2000 election shows as much about voter preference on abortion as voter preference for party label – nothing.

Third, the Complaint is devoid of allegations showing cohesiveness. There is no allegation that Democrat voters vote as a bloc or share a core set of interests. And the statewide election results would belie such an allegation. As the *Martinez* court explained, 234 F.Supp.2d at 1343, the average percent of Democrat votes, even if calculated from statewide elections over many years,

> does not identify a group of voters at all; it merely reflects a result without explaining which voters produced that result. It is not necessarily true, for example, that the voters who voted for Democrats (or Republicans) in a given election were the same people voting for Democrats (or Republicans) in other elections.

Because the Appellants did not allege an identifiable group, they failed to meet one of the *Bandemer* requirements and accordingly did not state a claim.

3. Application: actual discriminatory effect

The district court dismissed Appellants' partisan gerrymandering claim for failure to allege the requisite discriminatory effects under *Bandemer*. The allegations were described as: (1) harm from disproportional representation, which had been rejected by the *Bandemer* plurality; (2) a presumption of inadequate representation, also rejected by the *Bandemer* plurality; and (3) harm to the Democrat Party in that it would be harder to field competitive candidates, which the district court explained is irrelevant because it is harm to Democratic *voters* that is key, "not the Democratic party's health in Pennsylvania," which "do[es] not have the right to vote." JS 37-38a. The court rejected the allegation that the plan "'essentially shuts ... Democratic voters out of the political process[,]'"

because it was a legal conclusion. JS 38-39a. The court also explained that the Complaint lacked allegations indicative of discriminatory effects, such as that Appellants had been prevented from "registering to vote; organizing with other like-minded voters; raising funds on behalf of candidates; voting; campaigning; or speaking out on matters of public concern." JS 39a. Appellants did not seek to replead to cure those defects, nor did they have a basis to do so. The district court's analysis should stand.

4. This is not an extreme partisan gerrymander

Appellants have not shown an extreme partisan gerrymander in this case. The situation they depict in Pennsylvania is much less extreme than the facts in *Bandemer* and even in *O'Lear v. Miller*, 222 F. Supp.2d 850 (E.D. Mich.), *aff'd*, 537 U.S. 997 (2002), which the Court recently summarily affirmed. In their brief, Appellants even use conditional phrases about the future impact of the Pennsylvania plan. E.g., "even *if*, as often occurs ... Democratic candidates receive more total votes ... ." Appellants' Br. at 12 (emphasis added). A hypothetical does not create a constitutional controversy.

C. The *Bandemer* Standard Should Not Be Relaxed

Because they cannot meet the high threshold standard established in *Bandemer*, Appellants urge the Court to reinterpret and lower the standard for stating a partisan gerrymandering claim or to discard the *Bandemer* plurality's standard altogether in favor of their proposed 2-step test. The Court should decline both invitations.

1. No policy reasons to relax *Bandemer*

Appellants and their *amici*, attributing various ills to gerrymandering, beg the Court to relax *Bandemer*. These cries for reform rest on false premises and are misdirected.

a. Polarization in U.S. House not due to partisan gerrymandering

Appellants posit that gerrymandering is transforming the institution of Congress. Appellants' Br. at 9. They contrast the U.S. Senate with the House, where, they say, "much more than in the Senate, bipartisan compromise around moderate policies takes a backseat to party loyalty, resulting in historic levels of polarization." *Id.* However, the House is neither more nor less polarized than in the past, and the Senate is neither better nor worse than the House.

The Senate, where gerrymandering is impossible, is an excellent control group for testing Appellants' theory. In both the Clinton and Bush administrations, the Senate has been controlled by a partisan opposition that refused to bring many judicial nominations to a vote. *See* William H. Rehnquist, 1997-2002 YEAR-END REPORTS ON THE FEDERAL JUDICIARY. As to legislation, there is no reason to believe that the Senate is less polarized than the House. Partisan filibusters have long blocked legislation that has cleared the House.[20] The polarization of the un-gerrymandered Senate shows the falseness of the proposition that gerrymandering has caused polarization in the House. Ascertaining polarization's true cause is beyond the scope of this Brief and constitutional jurisprudence.

Amici Grofman & Jacobson attempt to show that polarization is increasing in the House using a method (DW-NOMINATE) created by Professors Poole & Rosenthal. Grofman Br. at 9 n.6. However, Poole & Rosenthal have used this method to calculate polarization in both the House and Senate and their latest report states

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[20] *See e.g.*, Dewar, *Mitchell Vows to Extend Senate Session to End GOP Filibusters*, WASH. POST (Oct. 4, 1994) A04 (Democrat leader calls "unprecedented in his 15 years in the Senate" the 5 simultaneous Republican-filibuster threats on nominations and bills, including House-passed education bill).

that "[b]oth the DW-NOMINATE and the optimal classification methods show a persistent trend towards ideological polarization within both chambers." Poole & Rosenthal, *D-NOMINATE After 10 Years*: A COMPARATIVE UPDATE TO CONGRESS: A POLITICAL ECONOMIC HISTORY OF ROLL CALL VOTING, 26 LEGIS. STUDIES Q. 5, 18 (2001). They also report that in the Senate "the two parties are almost perfectly separated in the liberal-conservative ordering." Poole, *108th Senate Rank Ordering*, (http://voteview.uh.edu/sen108.htm) (visited 10/8/03).

Amici Grofman & Jacobson also contend there has been increasing partisan polarization of the two parties' electoral base in the House, which they consider in part a consequence of redistricting. *See* Grofman Br. at 12. For support, they cite one of their own recent articles. *Id.* at 12 n.9. The article, however, uses the same flawed premise of Appellants - that the 2000 Bush-Gore race is a benchmark of partisan divisions in congressional districts. This assumption reflects scholarly myopia that focuses only on the presidency, rather than looking at cross-currents at the state level. Jacobson's book, THE POLITICS OF CONGRESSIONAL ELECTIONS (Addison-Wesley Educ. 5th ed. 2001), contradicts his argument here, by noting a growing proportion of voters in congressional races "who vote contrary to their expressed party affiliation." *Id.* at 108. This is corroborated by the phenomenon in Pennsylvania of a "liberal" Democrat (Vice-Pres. Gore) and a "conservative" Republican (Sen. Santorum) winning the same state and many of the same districts on the same day.[21] Moreover, since Grofman & Jacobson concede there is national polarization in presidential contests and rely on a methodology that also shows polarization as a "persistent trend" and "almost perfect" in the un-gerrymandered

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[21] Sen. Santorum is 1 of the 4 most "conservative" Senators in Poole's rankings, with Sen. Clinton the most "liberal."

Senate, the cause cannot be attributed to gerrymandering of House districts.

The history of polarization and partisanship in the House further shows that gerrymandering is not to blame. The first House elections in 1788 were hotly contested between Federalists and Anti-federalists, although there were no national party organizations. Party structure was inchoate, but partisanship was in full bloom. The first federal elections in Pennsylvania "were in large measure the continuation of a struggle between two well-defined political parties which began forming within weeks after the writing of the Pennsylvania Constitution of 1776. By the end of the War for Independence, the parties were commonly known as the Constitutionalists and the Republicans." I DOCUMENTARY HISTORY OF THE FIRST FEDERAL ELECTIONS 1788-1790, 229-34 (Univ. of Wisc. Press 1976) ("FED. ELEC."). In Pennsylvania, most Republicans became Federalists, while most Constitutionalists became Anti-federalists. *Id.* These competing factions clashed, even physically, over ratification of the U.S. Constitution. In 1787, when the Pennsylvania Assembly convened to consider calling a ratifying convention, the Anti-federalist members absented themselves from the chamber so as to deny it a quorum. The Speaker sent the sergeant-at-arms "to collect the absent members." II DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, 95 (State Hist. Soc. of Wisc. 1976) ("RATIF."). A posse seized enough absent members, brought and kept them in by force, to make a quorum. *Id.* at 104-09. The Assembly then voted to hold elections for delegates, who thereafter met in a state convention and ratified the Constitution. The absenting members were fined. *Id.* at 106. *Cf.* Brief of *Amici* Texas House Democratic Caucus *et al.*, at 10-12 (citing similar legislative tactics in modern times).

After ratification of the Constitution, the Republican/ Federalist majority in the Pennsylvania Assembly passed an election law in 1788 calling for the statewide election of representatives to the U.S. House. Perceiving partisan advantage, they rejected the demand of the Constitutionalist/Anti-federalists for district elections. I FED. ELEC. at 231-32.

The history of uninterrupted partisanship in Congress is beyond the limits of this Brief. It must suffice to note that Poole & Rosenthal, after finding polarization from the 1st through the 107th Congress, conclude that "compared to some earlier periods in the history of our Republic, the polarization in recent times is not terribly severe and there are no issues on the agenda that could destabilize the political system as slavery did in the 19th Century." Poole& Rosenthal, 26 LEGIS. STUDIES Q. at 24.

b. The House is not unrepresentative of the people due to gerrymandering

Appellants contend partisan gerrymandering has made the House unrepresentative of, and unresponsive to, the people. *See* Appellants' Br. at 4, 9. Their premise - that incumbents in safe seats can cater to donors and partisan interests without fear of reprisal by the voters - is sheer opinion and rebutted by many facts of common knowledge.

America continues to have peaceful revolutions at the polls. A stunning example is less than 10 years old, well within the period of allegedly gerrymander-induced petrification. In the mid-90s, Republicans, running on the "Contract with America," took control of the House (going from 176 members to a majority of 230); Senate control also changed (Republican seats going from 43 to 52). *See* Abstract, Table 387.

Although the 1994 Republican landslide stands out, Congress has had "steady and significant turnover."

Persily, *In Defense of Foxes Guarding Henhouses: The Case for Judicial Acquiescence to Incumbent-Protecting Gerrymanders,* 116 HARV. L. REV. 649, 654 (2002). About 10% to 20% of the House membership has changed in each election over the past 30 years. *Id.* While retention of incumbents is high, many factors other than gerrymandering contribute to it: "The list of possible causes for the growth of the incumbency advantage is quite long [and] includes the rise of candidate-centered politics, the increased use of the perquisites of office (such as porkbarreling,[22] the franking privilege, credit claiming and casework), and rising campaign costs that inhibit effective challengers." *Id.* at 666. The House and Senate have comparable incumbent-retention rates. *Id.* Redistricting is not a major cause of increased incumbent-retention rates. *See* Ansolabehere & Snyder, *The Incumbency Advantage in U.S. Elections: An Analysis of State and Federal Offices, 1942-2000*, 1 ELEC. L.J. 315, 326 (2002).

Appellants also assume that a high rate of retention of incumbents or a high percentage of "safe seats" for a party, due to gerrymandering, is a cause of partisanship. There is no reason to connect safe seats with partisanship. On the contrary, the Republican revolution of 1994 brought a flood of freshman members to the House and did not noticeably decrease partisanship in that body. There is every reason to believe instead that incumbents holding safe seats are more inclined to seek compromise. "Competitive seats" lead to more partisanship in campaigns and thereafter in Congress. *See* Salmore & Salmore, CANDIDATES, PARTIES AND CAMPAIGNS: ELECTORAL POLITICS IN AMERICA, 251-52 (CQ Press 2d ed. 1989)

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[22] A desire to receive "pork" may explain the curiously-shaped 12th District represented by Democrat Jack Murtha, dean of Pa.'s delegation and a very senior member of the Appropriations Committee. www.house.gov/murtha/bio02.htm (visited 10/8/03).

(noting growth in competitive districts in the 1980's and the increase in polarization in Congress).

There is also no reason to believe that voters want a system in which close contests result in frequent changes in representation. Voters develop relationships with incumbents that they want to preserve and use. Incumbents have responded by increasing congressional staff to handle more and more constituent services. *See* Cox & Katz, *Why Did the Incumbency Advantage in U.S. House Elections Grow*? 40 AM. J. POL. SCI. 478, 481 (1996). A judicial desire for close contests should not override voter preferences to retain popular incumbents.

There is good reason to conclude that redistricting by partisan-controlled state legislatures actually increases electoral responsiveness and produces fairer electoral systems. *See* Gelman & King, *Enhancing Democracy Through Legislative Redistricting*, 88 AM. POL. SCI. REV. 541 (1994). This conclusion may be surprising and counterintuitive to many scholars and laymen alike, yet is supported by empirical data. *See id.*

The Rakove *amici* say the U.S. House must be a "mirror" or "exact portrait in miniature" of larger society and that Act 1 sullied this principle. Their noteworthy citations for this include John Adams, who used the portrait metaphor in his 1776 tract THOUGHTS ON GOVERNMENT, and George Mason's and James Wilson's remarks at the Constitutional Convention, echoing Adams' notion.[23] *See* Rakove Br. at 7, 11. The Rakove *amici* - historians all - have gotten their constitutional history wrong.

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[23] The Rakove *amici* also cite early writers who focused on representation in state legislatures, not the U.S. House. Oddly, they also cite Anti-federalists who were *criticizing* deficiencies in representation. The Anti-federalists had an aspiration that was compromised to arrive at an agreement on governance.

John Adams was not a delegate to the Convention and his decade-earlier musings plainly did not move the Framers, who put into U.S. CONST. art. I, §2 not a "mirror" requirement but quite the contrary: age and residency requirements for House members, a slavery-skewed population count and a voter-qualification provision allowing state legislatures to limit voting.[24] The House could not have "mirrored" society at that time because typical voter qualifications of age, property, gender, servitude and residency would have excluded women, slaves, the poor, the illiterate, the young and the many immigrants continually arriving.[25]

George Mason did indeed want the House to mirror the people, such that even their diseases would be represented. I RECORDS OF THE FEDERAL CONVENTION OF 1787, 142 (M. Farrand ed. 1911) (1937 Revised ed.) ("Farrand"). But Mason did not achieve his goal, refused to sign the Constitution and campaigned against ratification, stating: "In the House of Representatives there is not the substance but the shadow only of representation; which can never produce proper information in the legislature." II Farrand at 638.

James Wilson was speaking against a proposal to have the House elected by state legislatures when he remarked that it "ought to be the most exact transcript of the whole society." I Farrand at 132, 141. However, Wilson subsequently acted inconsistently with his words,

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[24] Art. I, §2 also, by confining congressional districts to state boundaries, made it impossible to create equal populations in districts nationally. At present there is a difference of 408,413 people between the largest district and the smallest. *See* Abstract, Tables 18, 384. Such disparity also precludes the House from being a "mirror" of representation.

[25] *See e.g.*, N.C. CONST. §VII (1776); GA. CONST. art. IX (1777); MASS. CONST. §4 (1780).

proposing variously that the citizenship qualification for members of the House be raised from 3 to 7 years, II Farrand at 230, then lowered from 7 to 4 years, *id.* at 268, and even that the House be chosen by electors, not directly by the people. *Id.* at 414. Wilson later told Pennsylvania's ratification delegates that "[t]he convention endeavored to steer a middle course." III Farrand at 159. Wilson distinguished representation in the U.S. House from that in the state legislatures, *id.* at 160, stating:

> In them [state legislatures] there ought to be a representation sufficient to declare the situation of every county, town and district, and if of every individual, so much the better, because their legislative powers extend to the particular interest and convenience of each; ... No one power is of such a nature as to require [in the U.S. House] the minute knowledge of situations and circumstances necessary in state governments possessed of general legislative authority.

The Rakove *amici* are not arguing history as much as they are urging the Court to give the nation a "constitutional moment" to reflect what they believe the law ought to be.[26] But their aspiration is inconsistent with the Framers' fundamental departure from the British Constitution. The Framers put ours in writing and debated its language minutely. The Court should not undo their compromises, regardless of popular thinking then or now.

To become a mirror, the House would have to expand its membership and give representation to all political views, like the Italian Chamber of Deputies, a relatively huge body (475 members for a nation 1/5th our size) elected by single-member districts and by a proportional formula.

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[26] *See* Bruce Ackerman, WE THE PEOPLE 1 FOUNDATIONS (Belknap Press, Harv. Univ. 1991).

See Alvarez-Rivera, *Elections to the Italian Parliament* (2003) (http://electionresources.org/it/) (visited 9/14/03). The Italian system gives seats to a rainbow of parties but also resulted in 52 governments from 1945 to 1993, after which Italians, impressed by the swift formation of a new, stable government in Great Britain under its "first-past-the-post" elections, slightly modified their proportional system. Italy has since had 7 governments in 9 years. *Id.* While Congress may well have power under U.S. CONST. art. I, §4 to experiment with proportional representation, cumulative voting or other devices, *see e.g.* Brief of *Amicus* DKT Liberty Project, such is not within the judicial power.

c. Gerrymandering is self-limiting

The extreme gerrymandering that Appellants would have the courts curtail is, ironically, self-limiting. An extreme gerrymander stretches support margins so thin that it may often backfire. *See* Grofman & Brunell, *The Art of the Dummymander: The Impact of Recent Redistrictings on the Partisan Makeup of Southern House Seats,* in REDISTRICTING IN THE NEW MILLENIUM (Peter F. Galderisi ed., Lexington Books) (expected publication 2004).

A gerrymander also has limited useful life. As incumbents retire or move on to other offices, their districts become more open to party shift. Constituents move in and out of the district, residential development changes its character, as does business expansion or contraction. In 10 years, there may be a split in control of the state legislature or governorship, so that a compromise must be reached, merely to equalize district populations. *See Bandemer*, 478 U.S. at 152 (O'Connor, J., concurring). "Gerrymandering is not a potent enough instrument to permit a minority to dominate state government and perpetuate itself from decade to decade . . ." Lowenstein, *Bandemer's Gap: Gerrymandering and Equal Protection*, in POLITICAL GERRYMANDERING AND THE COURTS, 95 (B. Grofman ed.,

Univ. of Cal., Irvine 1990).

2. Interpretation of *Bandemer* is not informed by Article I or the 1st Amendment

Appellants contend that the Court in *Bandemer*, "extrapolating" from *Reynolds*, "held that the Equal Protection Clause mandates 'a level of parity between votes and representation sufficient to ensure ... that majorities are not consigned to minority status.'" Appellants' Br. at 21 (quoting 478 U.S. at 125 n.9). But, footnote 9 had no bearing on the *merits* of the partisan gerrymander claim; rather, it contains the plurality's response to Justice O'Connor's criticism that finding partisan gerrymandering claims justiciable would embroil the Court in "illegitimate policy determinations." *See* 478 U.S. at 158-60 (O'Connor, J., concurring). Appellants' reading of *Bandemer* is inconsistent with the plurality's recognition that identifiable political groups, like identifiable groups of racial minority voters, have no right to proportional representation. *See id.* at 132, 139. Appellants conflate a rationale for justiciability with a standard of proof so as to ease their burden to state a claim.

The one-person, one-vote situation, treated as perfectly analogous by Appellants, is quite distinct from what is now before the Court. The right not to have the power of one's vote diminished, which is at the heart of the one-person, one-vote cases, is a right unique to each individual voter. Diminishment of that right in a one-person, one-vote situation is direct and easily discerned from a review of district population, thus making the disadvantaged class immediately identifiable. *See Reynolds*, 377 U.S. at 567-68. The diminishment is not dependent, as it is here, on, at a minimum, the presence of enough voters who prefer the same candidate for the same reason (e.g., race, political party, religious belief, etc.). In other words, in the one-person, one-vote situation, *each* member of the

disadvantaged class is directly affected, while, in this alleged vote-dilution case, it is only the putative class (i.e., the group) that is disadvantaged; *no* member of the group is directly affected. The disparate treatment in racial vote dilution and partisan gerrymandering claims is one that occurs only in the group context. As such, these claims do not involve the individual right to vote that is diluted in the one-person, one-vote situation.

From 1st Amendment cases, Appellants derive a right "barring governmental imposition of a political orthodoxy and other forms of governmental discrimination based on viewpoint," which they claim "provides additional support for effective limits on partisan gerrymandering." Appellants' Br. at 23. 1st Amendment principles did not figure in *Bandemer*. The individual right to be free from governmental coercion in regards to belief – political or otherwise – does not equate to harm to a particular political party in the absence of any connection between the individual right and the asserted harm.

3. Article I is not an independent prohibition

Article I does not prohibit partisan gerrymandering. U.S. CONST. art. I, §4 invests state legislatures with broad discretion to regulate the time, place and manner of congressional elections. *See Smiley v. Holm*, 285 U.S. 355, 366 (1932) ("these comprehensive words embrace authority to provide a complete code for congressional elections"); *United States v. Classic*, 313 U.S. 299, 311 (1941) ("states are given, and in fact exercise a wide discretion in the formulation of a system for the choice by the people of representatives in Congress").

The Framers knew that gerrymandering was within the scope of the power given the States, yet did not narrow the grant of power. Instead, they gave Congress the power to override any state regulation that Congress deemed contrary to the nation's interests. The latter was

controversial in the Convention. When Charles Pinckney and John Rutledge moved to strike the grant of power to Congress, James Madison defended it:

> The necessity of a Genl. Govt. supposes that the State Legislatures will sometimes fail or refuse to consult the common interest at the expense of their local conveniency or prejudices. ... It was impossible to foresee all the abuses that might be made of the discretionary power. ... Whenever the State Legislatures had a favorite measure to carry, they would take care so to mould their regulations as *to favor the candidates they wished to succeed.* ... What danger could there be in giving a controuling power to the Natl. Legislature?

II Farrand at 240 (emphasis added). Madison's remarks show that art. I, §4 empowers the states to do precisely what has since become known as gerrymandering. Even so, the potential for the states "so to mould their regulations as to favor the candidates they wished to succeed" was not addressed by cabining state power. Rather, the Framers created a check by giving Congress the power to make or alter such Regulations. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 808 (1995).[27]

Appellants nevertheless see restrictions on the states that the Framers did not. Invoking *Wesberry*, they argue that the provision for election "by the people of the several states" under art. I, §2 implicitly restricts the states from using predominantly partisan considerations in districting. Although *Wesberry* reached the right result, its rationale is

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[27] *See also Wesberry v. Sanders*, 376 U.S. 1, 33 (1964) (Harlan, J., dissenting) ("the Convention understood the state legislatures to have plenary power over the conduct of elections for Representatives, including the power to district well or badly, subject only to the supervisory power of Congress").

a weak support, already bearing too heavy a load.[28] Using *Wesberry* to discover a new restriction on the states in art. I, §2 is even less supportable, especially when the Framers stated in the Convention their awareness of the broad discretion being vested in state legislatures, subject only to congressional oversight. Appellants' argument would substitute the Court for Congress under art. I, §4.

Appellants also rely on *dicta* in *Term Limits* to support their Article I theory. There, the Court stated: "the Framers understood the Elections Clause as a grant of authority to issue procedural regulations, and not as a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints." 514 U.S. at 833-34. This observation was repeated in *Cook v. Gralike*, 531 U.S. 510 (2001). But this language does not establish a test for assessing congressional districting plans; read in context, it merely reinforces the holdings in *Term Limits* and *Gralike* that a state cannot, under the guise of regulating the *manner* of elections, add *qualifications* for

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[28] *See* 376 U.S. at 24-25, 30-42 (Harlan, J., dissenting) (criticizing Court for confusing population equality principles among states and within each state); *id* at 18-20 (Clark, J., dissenting) (disagreeing that art. I, §2 "lays down the *ipse dixit* 'one person, one vote' in congressional elections" and citing equal protection as the source). Justice Harlan also faulted the Court for ignoring the existence and exercise of Congress' exclusive supervisory power. *Id.* at 23 (Harlan, J., dissenting). Current Justices have also expressed reservations about *Wesberry*. *See Karcher v. Daggett*, 462 U.S. 725, 745-47 (1983) (Stevens, J., concurring) ("the holding in *Wesberry*, as well as [the] holding [in *Karcher*], has firmer root in the Constitution than those provided by Article I, 2," notably, the Equal Protection Clause); *id.* at 782 n.14 (White, J., joined by Burger, C.J., Powell, J., & Rehnquist, J., dissenting) (no principled reason why source of one-person, one-vote principle different for state-legislative and congressional redistricting).

candidates beyond those enumerated in the Constitution.

D. Appellants' Proposed Test Is Flawed

Instead of explaining how their Complaint met the *Bandemer* standard, Appellants propose a standard not raised below, purportedly drawn from this Court's "other redistricting jurisprudence." The proposed test consists of: (1) an "'intent' element" positing that "politics can be a permissible redistricting consideration but cannot override all other considerations" and (2) an "'effects' element" said to build on the Court's "jurisprudence on vote dilution." Appellants' Br. at 31. The test is seriously flawed.

Under Appellants' test, a plaintiff need not show causation of harm from the alleged partisan gerrymander to some identifiable voter or group of voters. Appellants discuss at length how "harm" should be shown (their effects prong), but they never identify *how* that harm disadvantages an identifiable voter or group of voters by diluting an individual's vote. Harm not affecting some right of an individual or group of individuals is not cognizable. *See e.g.*, *Grutter v. Bollinger*, 123 S.Ct. 2325, 2337 (2003) (reiterating that since the 14th Amendment protects persons, courts must assess whether "the *personal* right to equal protection" has been infringed) (emphasis original). This very basic requirement cannot be ignored in any valid test for partisan gerrymandering.

Appellants' proposed intent element is supposedly drawn from racial gerrymandering decisions including *Shaw*. But, because districting is political by nature, it is ludicrous to have "intent" satisfied by a showing that politics were the predominant reason for district lines. When a legislature draws boundaries, it is defining political communities of interest. Since representation itself is political, it would be incongruous to define communities of interest in non-political terms. One could, for example, redistrict according to popular preferences for college

football teams. The districts would reflect communities of interest, yet such boundaries would be irrelevant to the object of redistricting: political representation.

Appellants' intent element also founders in equating boundaries based on politics with those based on race. Race is an immutable characteristic, which has been, and regrettably too often still is, a basis of purposeful discrimination against individuals. Political preference, in contrast, is a very mutable characteristic over which individuals have absolute control. Race is also an observable characteristic that allows targeted individual discrimination. Political preference, as expressed by the ballot, is private and the secrecy of the ballot precludes even the identification of the voter's preference.

Using race as the predominant basis for government action is always suspect. On the other hand, use of political considerations as a predominant basis underlies our American system of government. That concepts applicable to racial gerrymandering are not compatible with partisan gerrymandering claims was recognized by the Court in two recent decisions. In *Hunt v. Cromartie*, 526 U.S. 541, 551 (1999), the Court deemed "constitutional political gerrymandering" (i.e., that which is not invalid under *Bandemer*) to be a "traditional race-neutral principle." In *Easley*, 532 U.S. 234, the Court concluded that politics, not race, was the predominant (and valid) reason for how the challenged district was drawn.

Another difference between racial and partisan gerrymandering is the level of scrutiny applied. For racial gerrymandering claims, once race is identified as the predominant reason for drawing a district, the burden shifts to the plan's proponent to identify a compelling state interest to justify the use of race - i.e., strict scrutiny applies. *Miller*, 515 U.S. at 920. Partisan gerrymandering is different. Classification on the basis of political party,

party registration, or voter performance is not suspect and is not, in and of itself, unconstitutional. For that reason, political gerrymandering is not subject to strict scrutiny. *See Bush v. Vera*, 517 U.S. 952, 964 (1996) ("We have not subjected political gerrymandering to strict scrutiny"); *Shaw*, 509 U.S. at 650 ("nothing in our case law compels the conclusion that racial and political gerrymanders are subject to precisely the same constitutional scrutiny"). The racial gerrymandering cases offer no guidance in evaluation of a partisan gerrymandering claim.

Moreover, there are no truly neutral, non-partisan districting principles. Even the "traditional" districting principles have partisan effects. *See* below, Arg. Sec. II.B. Appellants' test would lead to a subtler form of gerrymandering, where partisan effects are hidden behind "traditional" principles. The party most adept at camouflaging its intended results would be the likely winner. State legislators know their districts and people better than courts can and are unlikely to be thus deceived.

Finally, the intent element of Appellants' test already was rejected. *See Bandemer*, 478 U.S. at 138-39 (rejecting Justice Powell's stance that "the intentional drawing of district boundaries for partisan ends and for no other reason violates the Equal Protection Clause in and of itself").

Appellants' test also posits that they should not be required to show they will be "'shut out of the political process'" but merely to identify "partisan *effects* on a statewide basis." Appellants' Br. at 33-34, 36 (emphasis original). Not having shown an actual discriminatory effect under *Bandemer*, Appellants now lobby for a lax test. Instead of requiring a showing of consistent degradation of influence, Appellants propose a "majoritarian standard" to show "partisan effects on a statewide basis." While they claim their test is "built on this Court's well-established jurisprudence on vote

dilution," Appellants' Br. at 31, the real building blocks are the theories of political scientists.

Appellants "operationalize" their test using selected and incomplete statistics showing only how the candidates of the two major political parties might fare in upcoming general elections under an as yet unused districting plan. *See* Appellants' Br. at 38, 45-46. Political *parties* have no constitutional right to vote and no right to a certain number of seats. *See Bandemer*, 478 U.S. at 132, 139.

Moreover, Appellants' proposed statistical test is manifestly defective. Citing the testimony of Prof. Lichtman at the one-person, one-vote trial, they state that he "analyzed (on a district-by-district basis) the results of all 18 statewide contests for single-member offices … held in the previous decade." Appellants' Br. at 45. Lichtman, though, excluded important statewide races. He did not include any appellate judicial races, which are typically contests where name recognition of candidates is low and partisan affiliation matters a great deal. Those races would have undermined his conclusion because Republicans won all 7 judicial races in 2001 with 54% of the total vote. *See* JS 87a. Lichtman's predictions were also proven wrong in 2002, with Republicans winning fewer seats and even losing what he called a "heavily Republican" district. If the district court had enjoined the use of Act 1 based on Appellants' theory and their expert's analysis, the truth would never have been known.

Lichtman's methodology also wrongly "post-dicted" the results of congressional races from 1992-2000 in 9 situations. JA 74-75. And, one need only observe that the core of the 3 least competitive districts (1st, 2nd & 14th) under Act 34 are located in Pennsylvania's two big cities (Philadelphia & Pittsburgh), JS 164a, to know that those districts contain many Democrat voters and why those districts indicate nothing about the plan's partisan nature.

The methodology for Appellants' "majoritarian standard" is also contradicted by other data not considered by Lichtman in comparing statewide races with congressional races. These data are from the 7 states having only one congressional district. In those states, all races are statewide races, including House races. Yet comparing non-congressional statewide races in those states with congressional races shows results that are as incongruous as the 2000 statewide races in Pennsylvania. In 6 of the 7 states, the parties split the congressional and other statewide races in either 2000 or 2002 or both.[29]

The Lichtman methodology uses a false premise, namely that statewide races can be used as valid indicators of the partisan leanings of congressional districts, and then violates its own premise by excluding some elections.

In short, there is nothing to commend the "majoritarian standard" as a way to show the effects of redistricting. Whatever Appellants' standard shows, it is not degradation of the political power of any identifiable group of voters.

II. PARTISAN GERRYMANDERING IS A NONJUSTICIABLE POLITICAL QUESTION

Certain questions "in their nature political" are wholly outside the purview of the federal courts. *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 170 (1803). Political questions not amenable to judicial resolution are identified using the following factors:

> a textually demonstrable constitutional commitment of the issue to a coordinate political department; or

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[29] *See* Barone & Cohen, ALMANAC OF AMERICAN POLITICS 2004, at 82-91, 358-66, 951-59, 1232-39, 1457-68, 1622-30, 1762-67 (Nat'l Journal Group 2003) ("Almanac"). The Almanac, cited also by Appellants, compiles useful statistics; but is also an idiosyncratic commentary on politics, often based on press and other hearsay.

> a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Baker v. Carr, 369 U.S. 186, 217 (1962). *See also Nixon* v. *United States*, 506 U.S. 224, 228 (1993). Because redistricting "is fundamentally a political affair," partisan gerrymandering raises a political question "in the truest sense of the term." *Bandemer*, 478 U.S. at 145 (O'Connor, J., concurring). Factors identified in *Baker* militate in favor of either overruling *Bandemer* or limiting it to the redistricting of state legislative bodies.

A. Textually-Demonstrable Commitment

"The nonjusticiability of a political question is primarily a function of the separation of powers," as "it is the relationship between the judiciary and the coordinate branches of the Federal Government ... which gives rise to the 'political question.'" *Baker*, 369 U.S. at 210. Courts must "interpret the [constitutional] text in question and determine whether and to what extent the issue is textually committed" to a coordinate branch. *Nixon*, 506 U.S. at 228; *see also Powell v. McCormack*, 395 U.S. 486, 519 (1969). But once it is determined that the Constitution invests a co-equal branch with final discretion of the issue presented, the judiciary's role terminates.

In *Bandemer*, where "[d]isposition of th[e] question d[id] not involve [the Court] in a matter more properly

decided by a coequal branch of our Government," the Court held that partisan gerrymandering challenges to state legislative redistricting were justiciable. 478 U.S. at 123. In the case of congressional redistricting, there *is* a textually demonstrable commitment of an exclusive and final character to Congress. Art. I, §4 (emphasis added) provides that the "time, places and manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; *but Congress may at any time by Law make or alter such regulations*[.]" This provision subordinates state legislative authority to a supervisory and even superceding power vested in Congress. *See* Arg. Sec. I.C.3.[30]

Congress has exercised its authority. In 1842, Congress required all representatives to be elected from single-member, contiguous districts, *see* Act of June 25, 1842, 5 Stat. 491; in 1872, Congress required vacancies to be filled by special election and congressional elections to be held every 2nd year on the 1st Tuesday in November, Act of Feb. 2, 1872, 17 Stat. 28; in 1882, Congress required districts to contain "as nearly as practicable an equal number of inhabitants," Act of Feb. 25, 1882, 22 Stat. 5; in 1901, Congress required that districts be compact as well as contiguous, Act of Jan. 16, 1901, 31 Stat. 733, but in 1929, Congress failed to re-enact these requirements and they lapsed. *See* Act of June 18, 1929, 46 Stat. 21; *Wood v. Broom*, 287 U.S. 1, 7 (1932). Today, the only requirement is that Representatives be elected in single-member

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[30] *See also e.g.*, VI RATIF. at 1218 (Parsons) ("Without these powers in Congress, the people can have no remedy; But the 4th sect. Provides a remedy – A controuling power in a legislature composed of senators and representatives of twelve States, without the influence of our commotions and factions, who will hear impartially, and preserve and restore to the people their equal and sacred rights of election.").

districts, although election on a statewide basis is permitted in certain circumstances. *See* 2 U.S.C. §§2c, 2a(c); *see also Branch v. Smith*, 123 S. Ct. 1429 (2003).

Since 1980, at least 5 bills have been introduced in Congress to regulate gerrymandering in congressional districting.[31] To date Congress has declined to exercise its discretion to alter state regulations by restricting the use of political considerations. This Court should not interfere with Congress's judgment that it has sufficiently exercised its power. Each member of Congress answers to constituents who may demand more if they wish. *See Bandemer*, 478 U.S. at 144 (Burger, C.J., concurring) ("the Framers ... placed responsibility for correction of such flaws in the people, relying on them to influence their elected representatives"); *id.* at 145 (O'Connor, J., concurring) ("the Court offers not a shred of evidence to suggest, that the Framers of the Constitution intended the judicial power to encompass the making of such fundamental choices about how this Nation is to be governed.").[32]

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[31] *See* H.R. 5037, 101st Cong., 2d Sess.; H.R. 1711, 101st Cong., 1st Sess.; H.R. 3468, 98th Cong., 1st Sess.; H.R. 5529, 97th Cong., 2d Sess.; H.R. 2349, 97th Cong., 1st Sess.

[32] Precedent involving congressional redistricting plans does not dictate justiciability of Appellants' claim. In *Baker*, the Court cited cases said to "settle[] the issue in favor of justiciability of questions of congressional redistricting," 369 U.S. at 232 (citing *Colegrove v. Green*, 328 U.S. 549 (1946); *Smiley*, 285 U.S. 355; *Koenig v. Flynn*, 285 U.S. 375 (1932); *Carroll v. Becker*, 285 U.S. 380 (1932)), but those cases did not address partisan gerrymandering. *Smiley* and its progeny involved constitutional interpretation, not review of the substantive validity of a plan. *Colegrove* did not decide justiciability, as Justice Rutledge, the pivotal vote, read *Smiley* too broadly and, also, favored dismissal. 328 U.S. at 565 (Rutledge, J., concurring).

The substantive validity of a congressional redistricting plan was addressed in *Wesberry*, based on *Baker*. *See* 376 U.S. at 6. But *Baker* addressed state legislative districting, which involves no textual commitment to Congress. To the extent *Baker* stands for the broader principle that an election regulation impinging on the individual right to vote cannot escape judicial scrutiny, the one-person, one-vote claim in *Baker* and *Wesberry* is distinguishable from the claim here, because, as explained in Arg. Sec. I.C.2, a one-person, one-vote violation obviously and directly implicates an individual right, while a partisan gerrymandering claim requires a group. Further, judicial assessment of a one-person, one-vote claim, involving only a mathematical determination, uses a judicially-manageable standard that does not impinge upon legislative prerogatives or require any forbidden policy determination about the preferred nature of representation.

B. Other *Baker* Factors Favor Nonjusticiability

To decide a partisan gerrymandering claim a court would be forced to make forbidden policy determinations "about how this Nation is to be governed." 478 U.S. at 145 (O'Connor, J., concurring). In contrast, in one-person, one-vote cases the courts accept and incorporate the basic legislative choices previously made.

This distinction between the two types of cases becomes clear in contemplating relief. Every one-person, one-vote case to date has been resolved either by a legislature enacting a new plan or, if the legislature is deadlocked, by a court drawing a new map. In the latter instance, when the court draws a map to achieve population equality, the court must deviate as little as possible from the previously enacted map, thus preserving the policy choices inherent in the map. *See White*, 412 U.S. at 795-97. But, if the courts are tasked with exorcising partisanship from mapmaking, they would not be able to

use previous legislative enactments as the historical base for map-drawing because those plans will themselves be infected with politics. Even if the judiciary tried to retain some "good" political choices by the legislature while discarding other "bad" partisan choices inherent in a previous enactment, the judiciary would still be making basic legislative choices and would find both its decisions and its decision-makers being scrutinized and critiqued for partisan bias.

Amici Texas House Democratic Caucus cite their state as an example of partisan abuses in districting. Yet Texas's experience is actually an example of the judiciary's shortcomings as political mapmakers.

In 2001, when the Texas legislature deadlocked, a federal court drew a congressional districting plan to bring Texas districts into compliance with the one-person, one-vote principle. *Balderas v. Texas*, No. 6:01-CV-158 (E.D. Tex. 2001), *aff'd*, 536 U.S. 919 (2002). The court sought to use neutral principles, so as "to keep our thumb off the political scale." *Id.* at 10. Relying on a political scientist's testimony, the court gave weight to: preserving majority-minority districts; allocating Texas's 2 new seats to areas of population growth; general historic locations of districts in the state; emphasizing compactness and contiguity; and following local political boundaries that historically defined communities. The court then looked at the effect of its draft plan on 3 senior incumbents of each party and found they would not be harmed. Finally, the court checked its plan by comparing the number of districts leaning to each party based on prior elections. The court found its plan likely to produce a congressional delegation roughly proportional to past party voting across Texas. The court declined to create new minority influence districts for either African-American or Latino voters, noting that creating an "opportunity district" was a political

choice for the legislature. *Id.* at 6-10.

The 2002 elections were a test of the court's plan. Republicans took control of both state houses, and took every statewide race, winning for U.S. Senator (55% of the vote), Governor (58%), Lt. Governor (52%), Attorney General (57%), Comptroller (64%), General Land Office Commissioner (53%), Railroad Commissioner (55%), Agriculture Commissioner (60%), Chief Justice (58%), 4 Supreme Court Justices (54-57%) and 3 judges of the Court of Criminal Appeals (57-58%). *See* Texas Election Results (www.sos.state.tx.us/elections/forms/2002nov.pdf)(visited 10/13/03). But, under the court's plan for congressional districts, Republicans got 53.33% of the total vote yet won only 15 seats (47%), while Democrats got 43.89% of the vote yet still won 17 seats (53%).[33] Clerk of the House, Statistics of the 2002 Congressional Election (http://clerk.house.gov/members/election_information/elections.php) (visited 10/11/03).

Under Appellants' theories, the 2002 elections revealed inherent partisan bias in the Texas court's plan.[34] When the legislature did not act, the court had no alternative but to seek to use "neutral" principles in drawing a plan to achieve population equality. Yet, despite its non-partisan goal and methods, the court's plan was out of sync with the peoples' preferences in the very next election. The *Balderas* court's error was political, not judicial. Seeking only to equalize populations, the *Balderas* court largely

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[33] The Republican vote total was even more impressive, since they left 5 seats uncontested, while Democrats contested all 32.

[34] The Texas legislature has now passed a plan. Democrat legislators delayed it by the ancient tactic of absenting themselves to deny their chambers a quorum. *Amici* Texas House Democratic Caucus Br. at 10-12. The houses compelled their attendance, an equally ancient power, used to obtain ratification of the Constitution itself. *See* Arg. Sec. I.C.1.a.

incorporated past political decisions into its map-making, resulting in a plan with an inherent partisan bias.[35]

Given its limited objective, i.e., population equality, the *Balderas* court accomplished its mission, even though there was partisan bias inherent in its work. But, if a court were to undertake the broader task of remedying partisan bias, a court could not justify setting its anchor in past policy choices. A court trying to draw a map to achieve partisan "fairness" would have to discard all prior legislative decisions as tainted by the political process. It would then have to make political decisions *ab initio*.

Yet the courts cannot replicate what legislators do in expressing the will of the people. The *Balderas* court, for example, received its input in public; it could have no private discussions with constituents, local officials or members of Congress to find out what they really wanted. True likes and, perhaps more importantly, dislikes and local rivalries are apt to elude a court, which will hear only the sanitized views of those witnesses who choose to speak in a public forum. Legislators, though, may actively seek out constituent comment rather than wait for counsel to present a witness list. Expert witnesses have inordinate influence on courts, whereas legislators rely on their intimate knowledge of constituencies despite what the experts say.[36] Most importantly, legislators may initiate

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[35] The court's use of historical and traditional factors introduced bias from the 1991 plan enacted by a Democrat-controlled legislature. That plan has been described as the Democrats' "masterpiece," drawn by *amicus* Democrat Rep. Martin Frost's aide. *See* Almanac at 1510. In each election under the 1991 Frost plan from 1994 on, Republican candidates won a majority of statewide votes but a minority of the seats. *Id.*

[36] "[I]t is quite typical for nonpartisan experts to attempt to make district lines as coterminous with political subdivision boundaries as possible. Pursuing such a goal . . . often conflicts

policy changes, discarding even their own precedent.

Unable to function as legislatures, the courts lack discoverable and manageable standards for addressing partisan gerrymandering in 4 critical areas: defining groups, setting constitutional limits, measuring partisan effects and crafting relief.

The standards developed under the 14th Amendment do not transfer to a partisan gerrymandering claim, which, by its very nature, implicates the rights of a group as opposed to an individual. *See* 478 U.S. at 149-152 (O'Connor, J., concurring). Moreover, defining a group is itself problematic as this case shows: are Appellants the Santorum Democrats or the Gore Democrats?

Drawing a constitutional line also defies judicial management. How disproportionate must election results be before they are "too" disproportionate? Even more treacherous is measuring partisan effect. What races, of what vintage, should a court choose to weigh the electoral strength of different groups? The more a court reaches back in time to weigh voting strength, the more it risks invalidating subsequent changes in voter preference and stifling future change. For example, Republican majorities took control of Congress in 1995, but had the courts in 1991 tried to assure partisan balance based on past electoral strength, that change might have been obstructed. The courts must not become an obstacle to political change.

There are no "neutral principles" with which to craft relief. Every principle, whether applied, modified or disregarded, has political consequences for representation. And "traditional" principles often conflict with one

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with attention to communities of interest that straddle such boundaries and with a state's public policy goal of regionalism in uniting cities and suburbs." Persily, 116 HARV. L. REV. at 678.

another, requiring basic policy choices in weighing them.[37] E.g., using political subdivision boundaries and compactness can pack Democrats and minorities into urban constituencies. And growth has blurred the boundaries between city, suburbs and countryside.[38] Federally-subsidized highways and regional sewerage, linking development along corridors that join city, suburb and farm, may actually define new communities of interest better than boundaries set in the 19th century. Growth produces "ugly" shapes in such corridors, but courts should not use an aesthetic standard for evaluating representation.[39] Judicial enforcement of traditional criteria will stifle representation of emerging communities.

Even when political boundaries make sense, a legislature may still rationally decide that it does not want

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[37] *See* Butler & Cain, CONGRESSIONAL REDISTRICTING COMPARATIVE AND THEORETICAL PERSPECTIVES, Ch. 4 ("Values and Trade-Offs") (Macmillan Pub. Co. 1992).

[38] Many areas have been split by freeways, which have become new "natural boundaries" that define political districts and communities of interest. *See* Mac Donald, *Redistricters are Rethinking Communities of Interest*, 42 Public Affairs Report (Inst. of Gov. Studies, Univ. of Cal., Berkley 2001) (www.igs.berkeley.edu/publications/par/fall2001/redistrict.htm) (visited 10/12/03). Further, urban sprawl, the predominant mode of development for 50 years, disperses population in unplanned and uncoordinated single use developments that are not functionally related to surrounding land uses and which appear as "'low-density, ribbon or strip, scattered, leapfrog, or isolated development.'" Carruthers & Ulfarsson, *Fragmentation and Sprawl: Evidence from Interregional Analysis*, 33 GROWTH AND CHANGE 312, 314-15 (2002) (internal citations omitted).

[39] *Cf. Shaw v. Reno*, *supra*. But there were two facial aspects of the long string of a district that combined to produce the result in *Shaw*: the shape of the district and the color of its residents.

constituencies stacked neatly within one another like nested Russian dolls. Especially for Congress, a state legislature may wish to promote a multi-regional or statewide outlook, believing state legislators already address local issues. The Constitution "forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the state legislatures." THE FEDERALIST PAPERS No. 10 (Fairfield ed., 2d ed. The John Hopkins Univ. Press 1981) (Madison).[40] In any event, local officials and members of Congress may lobby for having intact political units in congressional districts, because, contrary to Madison's vision, they subscribe to the view that "all politics is local." These choices are all open to legislatures but not to the judiciary.

The courts cannot overcome their limitations by engaging in a "sensitive and searching inquiry."[41] The inquiry will necessarily be political, yet unable to replicate either the constituent communication or the future-shaping vision permitted to legislators. Districting is not a question with merely incidental political overtones. "Politics and political considerations are inseparable from districting and apportionment." *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973).

Legislatures are institutionally equipped to handle the competing considerations and interests implicated by the task. *See Connor v. Finch,* 431 U.S. 407, 414-15 (1977) ("[A] state legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality. The federal courts by contrast possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the

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[40] *See also* James Wilson's remarks, above at Arg. Sec. I.C.1.b.

[41] *Bandemer*, 478 U.S. at 165 (Powell, J., dissenting).

people's name"); *Miller*, 515 U.S. at 915 ("Federal-court review of districting legislation represents a serious intrusion on the most vital of local functions ... the States must have discretion to exercise the political judgment necessary to balance competing interests"); *Abrams v. Johnson*, 521 U.S. 74, 101 (1997) ("The task of redistricting is best left to state legislatures, elected by the people and as capable, if not more so, in balancing the myriad of factors and traditions in legislative districting policies.")

Hearing partisan gerrymandering claims against congressional districting plans would evidence a lack of respect for the legislative branches, which the Constitution identifies and the Court has historically recognized, as the proper locus for the political task of redistricting. *See e.g. Reynolds*, 377 U.S. at 586 ("reapportionment is primarily a matter for legislative consideration and determination"); *Gaffney*, 412 U.S. at 749 ("From the very outset, we recognized that the apportionment task, dealing as it must with fundamental choices about the nature of representation, is primarily a political and legislative process") (internal citations omitted); *Connor*, 431 U.S. at 413-15; *Upham v. Seamon*, 456 U.S. 37, 41-42 (1982).

CONCLUSION

The Court should affirm the district court's judgment for the reasons stated above.

Respectfully submitted,

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No. 02-1580

In the Supreme Court of the United States

RICHARD VIETH, ET AL.,
Appellants

v.

ROBERT C. JUBELIRER, ET AL.,
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIEF OF APPELLEES CORTÉS AND ACCURTI

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QUESTIONS PRESENTED

1. Whether the District Court correctly dismissed the appellants' claim of partisan gerrymandering in Pennsylvania's congressional redistricting statute?

2. Whether a State violates the Equal Protection Clause when it draws congressional redistricting lines for partisan political ends and for no other reason?

3. Whether the Constitution requires States to draw congressional districts which ensure some degree of proportionality between the votes which a political party receives statewide and the number of congressional seats it wins?

PARTIES TO THE PROCEEDING

The appellants are Richard and Norma Jean Vieth and Susan Furey.

The appellees on whose behalf this brief is filed are Pedro A. Cortés, Secretary of the Commonwealth of Pennsylvania; and Monna J. Accurti, Commissioner of the Bureau of Commissions, Elections and Legislation of Pennsylvania's Department of State.

Other appellees, separately represented, are Edward G. Rendell, the Governor of Pennsylvania; Catherine Baker Knoll, the Lieutenant Governor; Robert C. Jubelirer, the President Pro Tempore of the Pennsylvania Senate; and John M. Perzel, the Speaker of the Pennsylvania House of Representatives.

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OPINIONS BELOW

The District Court's opinion of January 24, 2003, is reported at 241 F.Supp.2d 478 and is reprinted in the Appendix to the Jurisdictional Statement ("J.S. App.") at 1a. An earlier opinion of the District Court addressing appellants' claim of partisan gerrymandering, filed on February 22, 2002, is reported at 188 F.Supp.2d 532 and is reprinted at J.S. App. 13a. The District Court's opinion of April 8, 2002, which addresses appellants' one-person one-vote claim, is reported at 195 F.Supp.2d 672 and is reprinted at J.S. App. 46a.

STATEMENT OF JURISDICTION

This is an appeal from a final order issued by a three-judge district court, over which the Court has jurisdiction pursuant to 28 U.S.C. § 1253. The District Court's order was entered on January 24, 2003. Appellants filed their notice of appeal on February 24, 2003 and filed their Jurisdictional Statement within sixty days of that date.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article I, Section 2 of the Constitution provides in relevant part that the members of the House of Representatives shall be "chosen ... by the people of the several States...."

2. Article I, Section 4 of the Constitution provides in relevant part that "[t]he times, places and manner of holding elections for senators and representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations...."

3. Section 1 of the Fourteenth Amendment to the Constitution provides in relevant part that "[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws."

4. 2 U.S.C. § 2c provides that "[i]n each State entitled to more that one Representative ... there shall be established a number of districts equal to the number of Representatives...." Section 2a of Title 2 provides that after the decennial reapportionment of the House of Representatives among the States, each State is to be "redistricted in the manner provided by the law thereof."

5. Pennsylvania's Act 2002-34 ("Act 34"), *codified at* Pa. Stat. Ann., tit. 25, §§ 3595.101 through 3595.501 (Purdon 2003 Supp.) establishes the boundaries of Pennsylvania's nineteen congressional districts. It is available on WestLaw at PA ST 25 P.S. § 3595.101 *et seq.* but is not reprinted in the record.

STATEMENT OF THE CASE

This case arises out of the congressional redistricting statute adopted by the Pennsylvania legislature in the wake of the 2000 census. The appellants are three Pennsylvania voters who claim that the statute violates the Constitution because, they say, it guarantees Republicans "a supermajority of seats, even if their congressional candidates attract fewer votes than do their Democratic opponents." Br. for Appellants 2.

Appellants, instead of providing a "concise statement ... setting out the facts material" to this case, Sup. Ct. R. 24.1(f), open their brief with an overtly argumentative "Statement" exhorting the Court to save the Nation from what they see as the evils of partisan redistricting. *E.g.*, Br. for Appellants 3 ("there are compelling reasons why this Court should ... put[] a stop to these severe

distortions of the democratic process"). To this end, the "Statement" advances a series of tendentious and highly dubious propositions which appellants assert as facts, but which are neither supported by the record of this case, nor so obviously true as to need no support, nor so universally accepted as to be beyond reasonable dispute. We therefore first address these assertions.

1. First, appellants claim that partisan gerrymandering has not only rendered the House of Representatives "unrepresentative of the people" — a remarkable assertion in itself — but has also greatly reduced the number of competitive districts nationwide, "drain[ing] any potential for fixing that imbalance through the normal electoral process." *Id.* at 4. In fact, however, the idea that recent trends in redistricting have reduced political competition is the subject of considerable disagreement.

High rates of incumbent retention are neither new nor peculiar to the House of Representatives. In the last decade, "about 90% of the Senators and 95% of the House members sought reelection and won. Research on elections for Governor and other statewide offices that are similarly unaffected by redistricting, such as Attorney General, have shown incumbency advantages sometimes even exceeding those for House incumbents." Nathaniel Persily, *In Defense of Foxes Guarding the Hen House: The Case for Judicial Acquiescence to Incumbent-Protecting Gerrymanders*, 116 Harv. L. Rev. 649, 665 (2002). Factors other than redistricting, such as franking privileges, generous travel allowances, staff devoted solely to constituent service, and the rising costs of campaigning coupled with the advantages of incumbency in raising campaign funds — none of which appellants mention — play a commanding role in producing this phenomenon; indeed, some researchers have found no connection at all between redistricting and the high rate of incumbent

success. *See* Luis Fuentes-Rohwer, *Doing Our Politics in Court: Gerrymandering "Fair Representation" and Exegesis into the Judicial Role*, 78 Notre Dame L. Rev. 527, 550-554 (2003) (collecting commentary).

In fact, *partisan* gerrymandering — drawing district lines so as to maximize the advantage of one political party — is, at least to some degree, not even consistent with protecting incumbents, since it is apt to target incumbent members of the opposing party for defeat or elimination. *Bipartisan* gerrymanders, on the other hand — districts which are drawn to protect the interests of both parties, *see Gaffney v. Cummings*, 412 U.S. 735 (1973) — are by definition concerned with suppressing competition, yet go unmentioned by appellants.

Appellants likewise claim that, as the result of gerrymandering, "Representatives increasingly cater to their donors and party insiders," rather than to the voters, Br. for Appellants 9, but they offer no real support for this claim. On the level of individual Representatives, there is no evidence that safe districts produce unresponsive incumbents, Persily, 116 Harv. L. Rev. at 660; and on the national level, it is only a few elections since the House of Representatives changed hands for the first time in generations: hardly evidence that the voters have lost control of the process.

Finally, appellants claim that partisan gerrymandering has caused "historic levels of polarization" in the House. Br. for Appellants 9-10. Researchers, however, have found similar levels of polarization in the Senate, which is not affected by redistricting. Persily, 116 Harv. L. Rev. at 669. Lingering resentment over the loss of Democratic control of the House in the 1994 elections, the legacy of mistrust which both caused and resulted from the investigation and impeachment of President Clinton, bitterness over the 2000 presidential election, and simple

disagreements over public policy have surely contributed far more than redistricting to this state of affairs.

More importantly, appellants' assertion that these phenomena — assuming that they exist at all — show that "reform is needed," Br. for Appellants 11, masks a series of public policy judgments which are themselves controversial. Thus, appellants assume that a competitive district — in which the winner receives, say, 50.1% of the vote — is in some sense "better" than a "safe" district in which the winner receives 60%. Similarly, appellants assume that a Congress in which the positions of the two major parties substantially overlap is somehow "better" than a Congress in which there are clear lines of division between the parties. We discuss this in more detail in the Argument section; we note here only that the Constitution provides no basis for making these judgments. We turn now to the facts and proceedings in the District Court.

2. As a result of the 2000 decennial census, Pennsylvania's congressional delegation was reduced from twenty-one to nineteen representatives. J.S. App. 3a. In response, the Pennsylvania General Assembly enacted Act 2002-1 ("Act 1"), which redivided the Commonwealth among nineteen congressional districts. Although the appellants condemn Act 1 as an exercise in "extreme ... partisan bias," J.S. at 4, they acknowledge (in a footnote) that in fact Act 1 enjoyed bipartisan support. J.S. at 4 n.2. Forty-two — nearly half — of the members of the Democratic Caucus of the Pennsylvania House of Representatives voted in favor of Act 1, and without the support of these House Democrats Act 1 would not have passed. J. S. App. 89a.

Of the Commonwealth's roughly 7.7 million registered voters, about 3.7 million (48%) are Democrats, and about 3.2 million (42%) are Republicans. J.S. App. 84a. Of the

nineteen congressional districts created by Act 1, seven have a majority Democrat registration and seven have a majority Republican registration. In the remaining five districts, two have a Democrat plurality of registered voters and three have a Republican plurality. J.S. App. 90a-91a. Nevertheless, appellants alleged that under Act 1, Democrat candidates would take only five or six seats, while Republicans would win thirteen or fourteen, even though Democrat candidates were likely to win a majority of the statewide congressional vote. This, they claimed would constitute an impermissible partisan gerrymander. J.S. App. 137a-138a.

Neither of those projections, however, proved reliable. Election results that do not reflect registration figures are not unusual in Pennsylvania; in statewide elections between 1998 and 2001, Republican candidates won thirteen elections and Democrats won three. J.S. App. 85a-87a. In the 2002 congressional elections held pursuant to Act 1, Republican candidates received 56.2% of the statewide vote, while Democrats received 41.5%. Republicans won twelve of Pennsylvania's nineteen seats, and Democrats took seven.[1]

The appellants also alleged that Republicans have "essentially shut Democrats and Democratic voters out of the political process." J.S. App. 140a. The complaint, however, contains no allegations to support this conclusory assertion. As the District Court remarked,

> there are no allegations that anyone has ever prevented, or will ever prevent, Plaintiffs from: registering to vote; organizing with other like-

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[1] *See* PA DEPARTMENT OF STATE, *Official 2002 General Election Results*, available at http://www.dos.state.pa.us/elections/elec_results/dsf/elec_menu.cgi?year=2002&etype=G (visited May 29, 2003).

> minded voters; raising funds on behalf of candidates; voting; campaigning; or speaking out on matters of pubic concern.

J.S. App. 39a.

3. The appellants brought this action in the Middle District of Pennsylvania, which convened a three-judge court pursuant to 28 U.S.C. § 2284. In the District Court, the appellants raised two principal claims: first, that the congressional districts drawn by Act 1 represented an impermissible partisan gerrymander, in violation of the principles recognized in *Davis v. Bandemer*, 478 U.S. 109 (1986); and second, that Act 1's districts were not precisely equal and therefore violated the Constitution's guarantee of one person, one vote. J.S. at 5-6; J.S. App. 18a-19a.

On February 22, 2002, the District Court dismissed the appellants' partisan gerrymandering claim.[2] J.S. App. 39a, 44a-45a. The District Court, however, declined to dismiss appellants' one person, one vote claim. J.S. App. 28a-31a. After an evidentiary hearing, the District Court struck down Act 1 on one person, one vote grounds, enjoined its implementation, and ordered the Pennsylvania General Assembly to enact a new redistricting plan and submit it to the court for its review and approval. J.S. App. 46a, 57a. The District Court, however, stayed its injunction pending the disposition of

[2]At the same time, the District Court dismissed claims based on the Privileges and Immunities Clause, the First Amendment, and Section 1983, for failure to state a claim, and dismissed all claims against the Commonwealth itself on the basis of the Commonwealth's Eleventh Amendment immunity. J.S. App. 21a-23a, 39a-42a.

appeals taken by the Governor and other defendants[3]; and Pennsylvania, using the congressional districts drawn by Act 1, held its primary and general elections, with the results described above.

In the meantime, the Pennsylvania General Assembly enacted a revised congressional redistricting plan, known as Act 2002-34 ("Act 34"), to cure the one-person one-vote flaw which the District Court had identified and to govern future elections. After a further hearing, the District Court agreed that "Act 34 represents a good faith effort to achieve precise mathematical equality in congressional district-to-district population." J.S. App. 10a.

The appellants asserted, however, that Act 34 had not cured what they regarded as Act 1's shortcomings as to partisan gerrymandering, and they asked the District Court to impose remedial districts. J.S. App. 1a, 11a. On January 24, 2003, the District Court denied the appellants' motion, relying on its earlier decision:

> In [*Vieth v. Commonwealth of Pennsylvania*, 188 F.Supp.2d 532 (M.D.Pa. 2002) J.S. App. 13a-45a] *Vieth I*, the court dismissed this claim because "plaintiffs [did not] allege facts indicating that they had been shut out of the political process, and therefore, they cannot establish an actual discriminatory affect on them" as required by *Davis v. Bandemer*, [478 U.S. 109 (1986)] . . .. Act 34 is essentially the same redistricting plan as Act 1 except

[3]The appeal of the Governor and other executive branch defendants was docketed at No. 01-1823; and the appeal of defendants from the legislative branch was docketed at No. 01-1817. Both appeals were dismissed as moot on October 7, 2002. *Schweiker v. Vieth*, 123 S.Ct. 68 (2002); *Jubelirer v. Vieth*, 123 S.Ct. 67 (2002).

for the fact that Act 34 does not possess an avoidable population deviation. Accordingly, whatever partisan effect Act 1 had, Act 34 will have as well. The court therefore incorporates by reference its discussion in *Vieth I* regarding partisan gerrymandering and holds that the undisputed facts in this case are insufficient to establish such a claim.

J.S. App. 11a-12a (internal citations omitted).

In *Vieth I*, the District Court had held:

[appellants'] allegations amount to this[:] Act 1 is rigged to guarantee that thirteen of Pennsylvania's nineteen congressional representatives will be Republicans. As a result, Democrats will have a more difficult time electing their candidates.

J.S. App. 36a. This, the District Court said, "is simply an argument for proportional representation. However, *Bandemer* soundly rejected such a basis for an equal protection violation." J.S. App. 37a. The District Court therefore held that appellants' allegations were "insufficient to make out a cause of action" under *Bandemer*, and entered judgment in favor of the appellees and against the appellants. J.S. App. 12a. This appeal followed.

SUMMARY OF ARGUMENT

1. Partisan gerrymandering violates the Constitution, if at all, only where the disfavored party has been shut out of the political process as a whole. The Court has long recognized that politics and political considerations are inseparable from the drawing of district lines and that therefore the drawing of such lines to favor one political party or another, without more, does not violate the Constitution. The Court has also repeatedly rejected any

requirement of proportional representation: the concept that legislatures must draw districts which allocate seats as nearly as possible to a given group's anticipated share of the statewide vote. Proportional representation is, indeed, inconsistent with the idea of districting itself and is disconnected from the political reality of district-based elections. Moreover, any idea of proportional representation presupposes the existence of some base or norm against which the results of actual elections may be measured. No such norm exists, and any effort to create one would inevitably require the courts to engage in political value judgments unsuitable for judicial decision-making.

In the past, the Court has presumed that, in a democracy, political over-reaching in redistricting is both self-limiting and self-correcting; in general, the Court has intervened only where the democratic process has itself broken down and is in need of restoration. Accordingly, the Court should reaffirm its rejection of proportional representation as a constitutional mandate, and should reaffirm that a partisan gerrymander violates the Constitution if, and only if, the disadvantaged political party has been effectively excluded from participation in the democratic process — a condition which will seldom, if ever, be experienced by a major political party. This demanding standard comports with the standard developed by the Court in the context of unconstitutional vote dilution, with the Court's general reluctance to second-guess the decisions of legislatures in this most political of legislative functions, and with the understanding of the lower courts.

Alternatively, the Court may wish to take this opportunity to reconsider the justiciability of partisan gerrymandering, and on that issue we agree with the concerns expressed by the concurring Justices in *Bandemer*, and by our co-appellees from the

Pennsylvania General Assembly, that entertaining such claims may tend to involve the courts in questions better left to the other branches. We believe, however, that the narrow standard we have proposed minimizes those concerns, making it unnecessary to reconsider the issue of justiciability in this case.

2. The "majoritarian" standard put forward by appellants is not only flatly inconsistent with the Court's existing jurisprudence, it will also unavoidably engage the Court in these inherently political questions. The "majoritarian" standard is simply a variant on the proportionality test which the Court has repeatedly rejected, and which suffers from all the flaws inherent in such tests. Proportionality has no roots in the Constitution, is inconsistent with the very idea of districting, is divorced from the political reality that it intends to measure, and it is at bottom arbitrary.

The "majoritarian" variant on proportionality proffered by appellants not only shares these flaws but exacerbates them. First, appellants' standard only takes effect where the disfavored party commands more than 50% of the votes but wins less than 50% of the seats. This 50% cut-off is not only arbitrary but perverse, since it ensures that judicial intervention will occur only where it is least needed: in "swing" States which have temporarily and narrowly fallen under the unilateral control of a single political party. Second, appellants' base or norm for assessing party strength is not the votes actually cast for congressional candidates, but the votes cast in other elections, for other candidates, for other offices, and at other times. Thus, appellants regard their 40% statewide showing in the most recent congressional elections as irrelevant; under their "majoritarian" test, appellants regard themselves as the "real" majority in Pennsylvania, entitled to a majority of congressional seats. This is not only arbitrary but bizarre.

Since there is no support in the Court's unconstitutional vote dilution caselaw or *Bandemer* for appellants' proposed standard, they seek it elsewhere. According to the appellants, drawing districts on partisan lines is constitutionally indistinguishable from drawing them on racial lines. The Court, however, has consistently held otherwise, repeatedly reemphasizing the fundamental distinction between districting based on racial classifications — which are presumptively illegitimate — and districting based on political motivations, which reflect legitimate state interests. Appellants propose to Court erase that distinction, but it is firmly routed in the fundamental purpose of the Equal Protection Clause. Similarly, appellants attempt to marshal support in the Court's First Amendment cases involving political discrimination but those cases have never been extended to the inherently political task of redistricting.

3. Finally, appellants claim that Article I, §4 of the Constitution places limits on the State's redistricting authority which are more stringent than those of the Equal Protection Clause. They offer no principle reason, however, why this should be so, and neither the text of Article I, §4 nor the Court's decisions offer them any support.

Article I, §4 is a positive grant of authority to the States; it does not, by its terms, forbid the States from doing anything nor has the Court so interpreted it. While the Court has certainly held that there are limits to the authority conferred by this provision; and has likewise held that Article I, §4 does not license or immunize violations of other provisions of the Constitution, such as the Qualifications Clause, the Court has never held that a state law violated Article I, §4 itself. In this case, there is no question of Pennsylvania having exceeded its Article I, §4 authority, since Congress has both authorized and

required the States to redistrict themselves after each reapportionment.

ARGUMENT

I. Partisan Gerrymandering Violates the Constitution, If at All, Only When the Disfavored Party Has Been "Shut out of the Political Process."

A. Neither drawing district lines to serve partisan ends, nor a failure to achieve proportional representation, violates the Constitution.

Even appellants concede that "it would be quixotic to attempt to bar state legislatures from considering politics as they redraw district lines," Br. for Appellants 3; and indeed it has long been clear that the mere drawing of district lines to favor one political party or another, without more, does not violate the Constitution. The Constitution does not require the States to draw politically neutral lines for the simple reason that "there *are* no neutral lines for legislative districts . . . every line drawn aligns partisans and interest blocs in a particular way different from the alignment that would result from putting the line in some other place." Dixon, *Fair Criteria and Procedures for Establishing Legislative Districts* 7-8, in *Representation and Redistricting Issues* (B. Grofman, A. Lijphart, R . McKay, & H. Scarrow eds. 1982) *quoted in Davis v. Bandemer*, 478 U.S. 109, 129 n.10 (1986) (plurality opinion) (emphasis added). As the Court

observed thirty years ago, in a decision upholding a bipartisan gerrymander,[4]

> It would be idle ... to contend that any political consideration taken into account in fashioning a reapportionment plan is sufficient to invalidate it. ... Politics and political considerations are inseparable from districting and apportionment. ... It is not only obvious but absolutely unavoidable, that the location and shape of districts may well determine the political complexion of the area. District lines are rarely neutral phenomena. They can well determine what district will be predominately Democratic or predominately Republican or make a close race likely ... The reality is that districting inevitably has and is intended to have substantial political consequences.

Gaffney v. Cummings, 412 U.S. 735, 753 (1973). The Court in *Gaffney* thus declined to undertake "the impossible task of extirpating politics from what are the essentially political processes of the sovereign States." *Id.*, at 754.

In *Davis v. Bandemer, supra*, seven members of the Court — comprising all of the Justices who concurred in the judgment — rejected the idea that "the intentional drawing of district boundaries for partisan ends and for no other reasons violates the equal protection clause in and of itself." *Id.*, at 138 (plurality opinion); *id.* at 144 (O'Connor, J., concurring in the judgment) (partisan gerrymandering claims not justiciable at all). *Accord Easley v. Cromartie*, 532 U.S. 234 (2001) (recognizing "the

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[4]In a "bipartisan gerrymander," district lines are drawn so as to protect the interests of both major parties by assigning safe districts to each. *Davis v. Bandemer*, 478 U.S. at 153-155 (O'Connor, J., concurring in the judgment).

creation of a safe Democratic seat" as a "constitutional political objective").

It is also clear that the Constitution is not violated merely because a redistricting plan does not ensure that a political party will win legislative seats in proportion to its percentage of the statewide vote. To the contrary,

> Our cases ... clearly foreclose any claim that the Constitution requires proportional representation or that legislatures in reapportioning must draw district lines to come as near as possible to allocation seats to the contending parties in proportion to what their anticipated statewide vote will be.

Bandemer, 478 U.S. at 130 (plurality opinion), *citing Whitcomb v. Chavis*, 403 U.S. 124, 153 (1971); *White v. Regester*, 412 U.S. 755, 765-766 (1973). "[W]e have required a substantially greater showing of adverse effects than a mere lack of proportional representation to support a finding of unconstitutional vote dilution." *Bandemer*, 478 U.S. at 131 (plurality opinion). *Accord id.*, at 145 (O'Connor, J., concurring in the judgment) (proportional representation not "consistent with our history, our traditions, or our political institutions"), 155 (proportionality requirement would be "calamitous for the federal courts, for the States, and for our two-party system").

Justice O'Connor explained that a requirement for proportionality between seats and votes is inconsistent with the idea of districting itself:

> Districting itself represents a middle ground between winner-take-all, state-wide elections and proportional representation for political parties. If there is a constitutional preference for proportionality, the legitimacy of districting itself is called into question:

> the voting strength of less evenly distributed groups will invariably be diminished by districting as compared to at large proportional systems for electing representatives.

Id., at 159. Moreover, proportionality requirements lack any grounding in the real-world political process:

> [O]ne implication of the districting system is that voters cast votes for candidates in their districts, not for a state-wide slate of legislative candidates put forward by the parties. Consequently, efforts to determine party voting strength *presuppose a norm that does not exist* — state-wide elections for representatives along party lines.

Ibid (emphasis added). Scholars have echoed Justice O'Connor's point:

> Each of these [votes/seats] criteria assumes that it is meaningful to consider the state-wide vote for the legislative body in question. This is a fundamental error. There is no state-wide vote in this country for the House of Representatives or the state legislature. Rather, there are separate elections between separate candidates in separate districts, and this is all there is. If the districts change, the candidates change. Their strengths and weaknesses change. Their campaigns change. Their ability to raise money changes. The issues change — everything changes. Political parties do not compete for the highest state-wide vote totals or the highest mean district vote percentages: they compete for specific seats.

Lowenstein & Steinberg, *The Quest for Legislative Districting in the Public Interest: Elusive or Illusory*, 33 UCLA L. Rev. 1, 59 (1985).

> The basic conceptual building blocks of the fair representation argument against partisan gerrymandering — the assumed existence of an identifiable minority party whose "true" strength can be objectively ascertained; the notion that minority votes are "wasted"; and the contention that parties' performances can confidently be ascribed to gerrymandering practices as distinguished from other potentially more powerful determinates of political outcomes — are highly debatable if not demonstrably false.
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> Schuck, *Partisan Gerrymandering: A Political Problem Without Judicial Solutions in Political Gerrymandering and the Courts*, 240, 250 (B. Grofman ed. Univ. of Cal. Irvine 1990).

It is thus well-established that neither partisan line-drawing, in and of itself, nor a failure to achieve seats/votes proportionality, violates the Constitution. What is not clear, and what the Court should resolve in this case, is the nature of the standard which does govern claims of partisan gerrymandering.

B. Partisan gerrymandering offends the Constitution only when the disfavored party has been denied access to the political process as a whole.

As we have seen, the Court in *Bandemer*, for good reasons, rejected any attempt to impose a requirement of seats/votes proportionality on the States. But on the question of just what limits the Constitution does place on partisan gerrymandering, no one view commanded a majority of the Court in *Bandemer*. *Cf.* 478 U.S. at 127-143 (plurality opinion) *with id.* at 144-161 (O'Connor, J., concurring in the judgment) *and id.* at 164-184 (Powell, J., concurring in part and dissenting in part). We submit

that the Court should make it clear that the use of partisan considerations in redistricting is unconstitutional when, and only when, the disadvantaged political group has "essentially been shut out of the political process," *id.*, at 140 (plurality opinion), a standard derived from the Court's decisions involving vote dilution that violates the Equal Protection Clause.[5]

Thus, in *White v. Regester*, *supra*, the Court sustained a claim of unconstitutional vote dilution because the evidence showed that "the black community has been *effectively excluded from participation* in the democratic primary selection process and was therefore generally not permitted to enter into the political process in a reliable and meaningful manner." *Id.* at 767 (emphasis added).[6] In *Gaffney v. Cummings*, *supra*, the Court explained that an election system "may be vulnerable [to challenge] if racial or political groups have been *fenced out of the political process* and their voting strength invidiously minimized." *Id.* at 754 (emphasis added). In *City of Mobile v. Bolden*, 466 U.S. 55, 69 (1980), the Court again emphasized that a viable vote dilution claim turns on

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[5]Appellants complain that the "shut out of the political process" test "eviscerates *Bandemer*," and blame this development on "misguided" lower courts. Br. for Appellants 36. In fact, as discussed in the text, the phrase "shut out of the political process" *originated* with *Bandemer*, although of course the concept behind the phrase was of long standing.

[6]The evidence in *White* included a history of official racial discrimination in Texas, a lack of black members of the legislative delegation since Reconstruction, effective control of the Democratic Party by a white-dominated organization which was neither in need of support from the black community nor responsive to its concerns, and the use of racial campaign tactics to defeat candidates supported by the black community. *Id.*, at 766-767.

evidence that "the political process leading to nomination and elections were not equally open to participation by the groups in question." And in *Rogers v. Lodge*, 458 U.S. 613, 625 (1982), the Court once more emphasized the importance of "evidence of exclusion from the political process," noting that "past discrimination had prevented blacks from effectively participating in democratic party affairs and in primary elections. ... [H]istorical discrimination had restricted the present opportunities of blacks to effectively participate in the political process." *Ibid.*

This same focus on the political process as a whole, and a group's systematic exclusion from that process, should govern in the context of partisan gerrymandering as well. The focus, in other words, should not be on the result of the political process but on whether there is access to that process at all:[7]

> The ultimate question is whether the controlling political group treats the plaintiff group as conventional political opponents or ... treat[s] the plaintiff group as pariahs and thereby render the plaintiff group unable to enter in to political coalitions or use other means for engaging in political competition on a roughly equal basis.

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[7]A more recent attempt to deny access to the political process was presented by *Romer v. Evans*, 517 U.S. 620 (1996). In *Romer* the Colorado Constitution had been amended to prohibit "all legislative, executive or judicial action at any level of state or local government designed to protect [homosexual persons]." *Id.* at 624. In declaring the amendment unconstitutional, the Court stated "it identifies persons by a single trait and then denies them protection across the board. The resulting disqualification of a class of persons from the right to seek specific protection from the law is unprecedented in our jurisprudence." *Id.* at 633.

Lowenstein, *Bandemer's Gap: Gerrymandering and Equal Protection in Political Gerrymandering and the Courts*, 64, 86 (B. Grofman ed. Univ. of Cal. Irvine 1990).[8]

This focus on the electoral system as a whole comports not only with the Court's cases on unconstitutional vote dilution, but with the Court's redistricting jurisprudence as a whole. That jurisprudence was marked, from its very inception, with the Court's determination to leave the inevitably political business of redistricting to the politicians, absent a self-perpetuating breakdown of the political process itself. The Court faced such a breakdown in *Baker v. Carr*, 369 U.S. 186 (1962), in which for sixty years all proposals to redistrict the Tennessee legislature had failed, leaving "the majority of the people of Tennessee ... no practical opportunities for exerting their political weight at the polls to correct the existing invidious discrimination. ... The majority of voters have been caught up in a legislative straight jacket." *Id.* at 248-249 (Clark, J. concurring). *See also Reynolds v. Sims*, 377 U.S. 533 (1964) (no redistricting of Alabama legislature since 1900). But in the absence of such breakdowns, the Court should continue to recognize that "the opportunity to control the drawing of electoral boundaries ... is a critical and traditional part of politics in the United States," *Bandemer*, 478 U.S. at 145 (O'Connor, J., concurring in the judgment), and should leave the results of that process as it finds them.

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[8]Other analyst have made similar points. It is important to distinguish between activities that merely disadvantage parties from "actions that exclude particular parties or groups from the political system entirely" "lockouts by comparison, target particular parties or groups for persistent exclusion from the opportunity to influence the political process". Bruce E. Cain, *Garretts Temptation*, 85 Va. L. Rev. 1589, 1600-1603 (1999). *See also* Rohwer, 78 Notre Dame L. Rev. at 565.

Political parties, of course, are not racial minorities, as noted by the plurality in *Bandemer*:

> The elements necessary to a successful vote dilution claim may be more difficult to prove in relation to a claim by a political group. For example, historical patterns of *exclusion from the political processes*, evidence which would *support a* vote dilution claim, are in general more likely to be present for a racial group than for a political group.

Davis v. Bandemer, supra at 131 n.12 (emphasis added). As Justice O'Connor remarked:

> Clearly, members of the Democratic and Republican Parties cannot claim that they are a discrete and insular group vulnerable to exclusion from the political process by some dominant group: these political parties *are* the dominant groups, and [there is] no reason to believe that they are incapable of fending for themselves through the political process.

Bandemer, 478 U.S. at 152 (O'Connor, J., concurring in the judgment) (emphasis in original). Certainly, the appellants in this case have not attempted to demonstrate their exclusion from the political process. But, as we now briefly discuss, the very narrowness of this standard works in its favor.

C. In the alternative, the Court should reconsider whether claims of political gerrymandering are justiciable at all.

We are aware, of course, that *Bandemer's* holding that claims of partisan gerrymandering are justiciable was adopted only over the vigorous dissent of three Justices. *See id.*, at 144 (O'Connor, J., concurring in the judgment). We do not disagree with the concerns

expressed in that dissent, and in the brief of the appellees from Pennsylvania's legislative branch. If the Court should reconsider this issue, we agree, for the reasons expressed in the *Bandemer* dissent and in the brief of our co-appellees, that such claims should be non-justiciable.

Nevertheless, we believe that the Court need not revisit that issue in this case. We believe that the standard we have set forth above — which is essentially the standard which the this District Court and others have been applying in the wake of *Bandemer* — narrowly cabins the circumstances under which a claim of partisan gerrymandering may succeed. This in turn has enabled the federal courts, as a practical matter, to avoid the intrusion into political questions which the *Bandemer* dissenters feared. The appellants' so-called "majoritarian" standard, on the other hand, will unavoidably require the courts to decide such questions, and we therefore turn to that subject.

II. The Court Should Reject Appellants' Proposed "Majoritarian" Standard, Which Is Simply a Variant of Proportional Representation.

A. Appellants' "majoritarian" standard is essentially arbitrary.

Appellants argue that claims of partisan gerrymandering should be judged against what they call the "majoritarian" standard: that a redistricting plan violates the Constitution when "the rival party's candidates could be consigned to less than half the seats even if its candidates consistently won a majority of votes statewide." Br. for Appellant 34. Appellants insist that their proposed test "does not compel proportional representation," *ibid*, but it is obviously just a variation on that theme.

We have already discussed above some of the shortcomings of proportional representation as a constitutional standard: its lack of any basis in the Constitution, its incompatibility with the very concept of districting, and its failure to reflect the realities of the political process.

> [v]oters do not vote for the House of Representatives or the State Legislature, but for particular candidates. A republican voter who votes for a democratic candidate for the State Senate because the republican candidate has been involved in a scandal or is too extreme in his positions or because the democrat is a personal friend or has been helpful in getting the voter a liquor license or just because the voters believed the candidate is a decent person who deserves to be reelected in spite of ideological differences, or for any of a thousand other reasons is not voting for democratic control of the State Legislature. Yet that is the way his vote is treated by the votes/seats theorist.

Lowenstein& Steinberg, *supra* at 60.[9]

To these can be added its essential arbitrariness. Any votes/seats analysis

> must inevitably rely on some notion of "normal" performance, which necessitates the use of a "base race." But a base race, to be a useful construct, must be one in which the effects of issues, candidates,

[9]Such realities include, for example, the "performance as a campaigner" of the candidates in each of the districts. Br. for Appellants 48. It is perhaps the appellants' recognized failure in considering such elements that explains their inability to accurately predict election outcomes over a period of ten months let alone a period of ten years.

> personalities, unusual party effort, and other contingent factors deemed irrelevant to the parties "true" strength are minimal. Judgments about these factors and their effects must be largely subjective and beg questions that lie at the heart of political competition and democracy.

Peter Schuck, *Partisan Gerrymandering: A Political Problem Without Judicial Solution in Political Gerrymandering in the Courts*, 240, 241 (Grofman ed. 1990). Moreover, because such judgments are so subjective,

> those who are most capable of making the judgment are likely to ... make unreliable witnesses because they are likely to be highly interested in the outcome of the litigation ... [T]he real motives of the litigants would be the plan's partisan consequences. Concern for these consequences would color every phase of the litigation, including its result." *Lowenstein & Steinberg*, 33 UCLA Law Rev. at 42.

In other words, the key question in any test of proportionality is, of course, "proportionate to what?" And to that question neither science, and still less the Constitution, can give a satisfactory answer. It is for these reasons that the Court has consistently rejected proportionality as a constitutional requirement; it was "clearly foreclosed" even at the time of *Bandemer*. *Id.*, at 130 (plurality opinion).

The "majoritarian" standard proffered by appellants differs from the proportional representation rejected in *Bandemer* in two ways, but both of these differences exacerbate, rather than reduce, its difficulties. First, the "majoritarian" standard would operate to invalidate a districting plan only where the disfavored political party consistently wins more than 50% of the votes but fails to

win a majority of seats. Br. for Appellants 34-35. But of course this is simply arbitrary. If the winner of 51% of the votes has a right to expect a majority of the seats, then there is no principled basis why the winner of, say, 25% or 30% or 40% should not be entitled to a similar proportional share of seats. Moreover, appellants' 50% standard could, by definition, come into play only in a State where the two major parties are at roughly equal strength: precisely where political over-reaching is most likely to be either self-limiting or self-correcting, and judicial intervention is thus least likely to be needed. But in a State dominated by one party, the dominant party could safely gerrymander the minority party out of *any* the seats with impunity. This is not only arbitrary but perverse.

Second, the appellants' measure of a political party's strength — that is, the way in which one determines whether or not a party has crossed the magic 50% line — is *not* the votes actually cast for its congressional candidates.[10] By that measure, of course, Pennsylvania's redistricting statute easily satisfies the "majoritarian" principle, since Republican candidates took 56% of the votes statewide, and won twelve of nineteen seats. The results of actual congressional elections, however, are said to be "highly misleading," Br. Opposing Mot. to Affirm 5, and a "poor measure." Br. for Appellants 38-39 n. 32. Rather, party strength is measured by analyzing past *statewide* elections for single-member offices such as President, U.S. Senator, Governor and so forth. The results of these elections are broken down by legislative districts, to determine whether the winner of the

[10]At first, appellants did rely on the votes they expected their congressional candidates to garner, *see* J.S. App. 138 (amended complaint). This change, of course, simply underlines the arbitrariness of their proposed standard.

statewide election also carried a majority of the congressional districts. If so, then the districting plan is presumably "fair," and if not, then it is "inequitable." *See* Br. for Appellants 46-47, *citing* J.A. 28-117 (Lichtman testimony).

In other words, whether a redistricting plan respects the "majoritarian" principle in *congressional* elections is to be measured, according to appellants, by analyzing the results of *other* elections, held at other times, with other candidates, for other offices. Thus it is that appellants can complain that in the 2002 congressional elections, a "Democratic majority ... carried only 7 of 19 seats." Br. Opposing Mot. to Affirm 5. The "Democratic majority" to which they refer, and which they claim was robbed of its rightful share of seats, comprises those who voted for the Democrats' *gubernatorial* candidate, *ibid*, while the fact that their congressional candidates received only 41% of the votes is dismissed as "highly misleading." *Ibid.*

Ironically, Pennsylvania's redistricting statute passes muster even under appellants' bizarre variant of the "majoritarian" standard. At the hearing on the one-person, one-vote challenge to Act 34, appellants produced an expert witness who performed the analysis just described. He analyzed nineteen statewide races over the past decade; and in every one of those races, the winner of the election also carried a majority of congressional districts. J.A. 84- 87 (Lichtman testimony), 273-276 (election statistics). Thus, whether in the real elections of the real world, or in the hypothetical elections of appellants' "majoritarian" test, there is no sense in which Pennsylvania's statute can be said to "frustrate majority rule." Br. for Appellants 31.

But the larger point is that appellants, although they claim to seek to vindicate the principles of *Bandemer*, in fact seek *Bandemer's* abandonment, and its replacement

with a scheme which ultimately rests upon political, rather than constitutional, judgments. It is not just that redistricting is a political task, or that there are no neutral lines for legislative districts and neutral criteria for redistricting.[11] It is also that the redistricting process itself is not grounded in broader principles that command general assent; rather whatever is to guide the redistricting process is itself one of the objects of the political struggle. Lowenstein & Steinberg, *The Quest for Legislative Districting in the Public Interest: Elusive or Illusory?*, 33 UCLA L. Rev. 1, 9-35, 73-75 (1985).

The Court was presented with similar circumstances in *United States, Department of Commerce v. Montana*, 503 U.S. 442 (1992). In *United States, Department of Commerce v. Montana*, the Court was faced with a challenge involving the census and the reapportionment of Congress. The Court recognized that apportionment of Representatives among the several states is to be accomplished "according to their respective Numbers." *Id.* at 444 (quoting United States Constitution, Article I, §2), and that Congress, pursuant to statute provided that "the method known as the method of equal proportions" shall be used to determine the number of representatives to which each state is entitled." *Id.* (quoting 2 U.S.C. §2a(a)).

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[11]The traditional districting criteria of compactness, political subdivisions, and communities of interest are neither grounded in the Constitution nor constitutionally required. *See Shaw v. Reno*, 509 U.S. 630, 647 (1993). Nor are they susceptible to simple and straightforward application without resolving partisan issues, nor are they neutral in the sense that they do not systematically favor one party over another. Lowenstein & Steinberg, *supra* 21-35. Moreover, these criteria are not neutral in another sense. The districting process is a political competition. These criteria are simply tools to be used in the service of that competition. *Id.* at 35.

Rejecting application of the one person, one vote principle, the Court held that in the context of apportionment of seats among states "neither mathematical analysis nor constitutional interpretation provide a conclusive answer. In none of these alternative measures of inequality do we find substantive principles of commanding constitutional significance. The poll star of equal representation does not provide sufficient guidance to allow us to discern a single constitutionally permissible course. . . . The constitutional framework that generated the need for compromise in the apportionment process must also delegate to Congress a measure of discretion that is broader than that accorded to the States in the much easier task of determining district sizes within state borders." *Id.* at 463-464. Choosing among various methods of apportionment "commands far more deference than a state districting decision that is capable of being reviewed under a relatively rigid mathematical standard." *Id.* at 464. A like circumstance is presented in the redistricting context.

There is no constitutional guide for deciding whether it is better to maximize competition at the district level — as appellants suggest, Br. for Appellants 4-6 — or to maximize the protection given to incumbents, with their accumulated experience and seniority. Deciding between those values is an inherently political question.

The point is not to identify all of the myriad of public interest goals that come into play in choosing among competing redistricting plans, nor to identify the effects of isolating one value, such as competitiveness, and sacrificing all others on its behalf. *See* Lowenstein-Steinberg, *supra* at 37-49, and also Persily, *supra* at 670-681. The point is that these competing political values exist and that "[t]here are tradeoffs for each approach. Good arguments can defend each approach, but it would be truly remarkable for unelected judges with lifetime

appointments to decide that competition is the value that should be placed above all others." *Id.* at 680. It would be no less remarkable for the Court to adopt appellants' essentially arbitrary "majoritarian" standard.

B. Appellants' "majoritarian" standard has no support in the Court's case law.

Appellants claim that their proposed standard finds support both in the Court's cases involving infringements on the voting rights of racial minorities, and in the Court's First Amendment cases involving political discrimination. Neither line of cases, however, provides them with any real support. Certainly, nothing in any of these cases comes close to endorsing appellants' "majoritarian" approach to redistricting.

As to the racial voting cases, the Court has repeatedly warned that the standards which apply in those cases cannot be simply imported wholesale into the realm of political gerrymanders.

> Classifying citizens by race, as we have said, threatens special harms that are not present in our vote dilution cases. It therefore warrants different analysis.
>
> * * *
>
> [N]othing in our caselaw compels the conclusion that racial and political gerrymanders are subject to precisely the same constitutional scrutiny. In fact, our country's long and persistent history of racial discrimination in voting — as well as our Fourteenth Amendment jurisprudence, which always has reserved the strictest scrutiny for discrimination on the basis of race, . . . would seem to compel the opposite conclusion.

Shaw v. Reno, 509 U.S. 630, 650 (1993). In *Bush v. Vera*, 517 U.S. 952 (1996), the Court emphasized again that where race is the predominant factor motivating the legislature's redistricting decisions strict scrutiny applies, *id.* at 959, but noted that "strict scrutiny would not be appropriate if race-neutral traditional districting considerations predominate over racial ones. We have not subjected political gerrymandering to strict scrutiny." *Id.* at 964. The Court has repeatedly reemphasized the fundamental distinction between districting based upon racial classifications and districting based on other criteria such as "party preference." *Hunt v. Cromartie*, 526 U.S. 541, 552 (1999).

The reason for this distinction is obvious: while racial classifications are inherently suspect, political classifications are inherent to the redistricting process itself. As Justice O'Connor succinctly put it, "[p]olitical affiliation is the keystone of the political trade. Race ideally is not." *Davis v. Bandemer*, *supra* at 161 (O'Connor, J. concurring in the judgment), quoting *United Jewish Organizations of Williamsburg, Inc. v. Carey*, 430 U.S. 144, 171 n.1 (1977)(Brennan, J. concurring).

The same can be said of the Court's political discrimination cases. The Court has never extended the reasoning of *Elrod v. Burns*, 427 U.S. 347 (1976) and its progeny to redistricting, and again the reason is obvious. Political considerations are not inherently part of the process of hiring and firing, say, deputy sheriffs, but they are "absolutely unavoidable," *Gaffney v. Cummings*, 412 U.S. at 753, in redistricting.

III. Article I, Section 4 of the Constitution Adds Nothing to Appellants' Claim.

Finally, appellants claim that Article I, § 4 of the Constitution places limits on the States' redistricting

authority which are more stringent than those of the Equal Protection Clause or Article I, § 2. Br. for Appellants 25. They offer no principled reason, however, why this should be so, and neither the text of Article I, § 4, nor the Court's decisions, offer them any support.

Article I, §4 provides that:

> The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

In explaining this provision, Alexander Hamilton characterized it as "that provision of the Constitution which authorizes the national legislature to regulate, in the last resort, the election of its own members." *The Federalist*, No. 59, p.393 (Alexander Hamilton) (Harvard Col. ed. 1961). Hamilton points out that as such power over elections must exist somewhere.

> ... [I]t must either have been lodged wholly in the national legislature, or wholly in the State legislatures, or primarily in the latter and ultimately in the former. The last mode has, with reason, been preferred by the convention. They have submitted the regulation of elections for federal government, in the first instance, to the local administrators; which, in the ordinary cases, and when no improper views prevail, may be both more convenient and more satisfactory; but they have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety.

Id. at 394. Hamilton goes on to characterize precisely what authority is encompassed in the provision. "Its authority would be expressly restricted to the regulation of the *times, places, the manner* of elections. The qualifications of the persons who may choose or be chosen, as has been remarked upon other occasions, are defined and fixed in the Constitution, and are unalterable by the legislature." *The Federalist*, No. 60, p.402 (Alexander Hamilton) (Harvard Col. ed. 1961) (emphasis in original).

The provision is, on its face, entirely consistent with Hamilton's explanation of it as a positive, if limited, grant of authority to the States; it does not, by its terms, forbid the States from doing anything, nor has the Court so interpreted it. The Court's cases do repeatedly seek to ensure that this limited grant of authority does not provide license or immunization for some otherwise unconstitutional activity. Reviewing that caselaw in *Wesberry v. Sanders*, 376 U.S. 1 (1964), the Court confirmed that "nothing in the language of that article gives support to a construction that would immunize state congressional apportionment laws which debase a citizen's right to vote...." *Id.* at 529. But the Court has never struck down a state law as a *violation* of Article I, § 4.

Appellants cite *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995). However, as the Court made clear in that case, the action did not involve some independent violation of Article I, §4 but a violation of the Qualifications Clauses. *U.S. Term Limits* involved a state constitutional amendment prohibiting the name of an otherwise eligible candidate for congress from appearing in the ballot if that candidate had already served a set number of terms. The Court recognized that this implicated the Qualifications Clauses and declaring the amended unconstitutional emphasized "The framers

intended the Election Clause to grant states authority to create procedural regulations, not to provide states with license to exclude classes of candidates from federal office." To the same effect is *Cook v. Gralike*, 531 U.S. 510 (2001) (ballot notations on candidates who failed to support term limits violated Qualifications Clause).

Appellants rely on the following passage from *U.S. Term Limits*:

> [T]he framers understood the Election Clause as a grant of authority to issue procedural regulations, and not as a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates or to evade important constitutional restraints.

Id. at 832-834, *quoted in* Br. for Appellants 27. But in this case there is of course no question of Pennsylvania attempting to "dictate electoral outcomes." Naturally, Pennsylvania's redistricting statute — like every other redistricting statute — cannot fail to *affect* electoral outcomes, but that is unavoidable. "The reality is that districting inevitably has and is intended to have substantial political consequences." *Gaffney v. Cummings*, 412 U.S. at 753.

Nor is there any question of Pennsylvania having exceeded its Article I, § 4 authority. Congress, exercising its own authority under Article I, § 4, has authorized and required the States to establish congressional districts. *See* 2 U.S.C. § 2c ("In each State entitled ... to more than one Representative ... there shall be established a number of districts equal to the number of Representatives...."); *id.*, § 2a (after reapportionment, States to be "redistricted in the manner provided by the law thereof"). Unless, therefore, Pennsylvania's congressional redistricting plan violates some other

constitutional provision — such as the Equal Protection Clause or Article I, § 2 — it must be upheld.

CONCLUSION

The Court should affirm the District Court's judgment.

Respectfully submitted,

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No. 02-1580

IN THE

Supreme Court of the United States

RICHARD VIETH, *et al.*,
Appellants,

v.

ROBERT C. JUBELIRER and JOHN M. PERZEL, *et al.*,
Appellees.

On Appeal from the United States District Court for the Middle District of Pennsylvania

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Appellees cannot point to a single set of factual circumstances – past or present, real or hypothetical – in which plaintiffs could bring a successful partisan-gerrymandering claim under their reading of the Federal Constitution. Their position, like that of the court below, is tantamount to overruling *Davis v. Bandemer*, 478 U.S. 109 (1986), and once again making partisan gerrymandering nonjusticiable.

But recent events – from Pennsylvania's congressional redistricting in 2002 to the unprecedented mid-decade "re-redistricting" of Texas and Colorado – show that a "hands off" approach invites gerrymandering so severe that it threatens our fundamental constitutional principle of majority rule. As the line-drawers have become more brazen in their willingness to instill bias in electoral maps, the need for judicial intervention has become compellingly clear.

Forty years ago, in *Baker v. Carr*, 369 U.S. 186 (1962), *Wesberry v. Sanders*, 376 U.S. 1 (1964), and *Reynolds v. Sims*, 377 U.S. 533 (1964), this Court held that malapportioned districts thwarted majority rule, that normal political processes could not solve the problem, and that federal judicial intervention was therefore proper. Today, partisan gerrymandering plays the same corrupting role in our political system – and calls for the same solution.

Appellees fail to rebut that basic point, legally or factually, and have no response to Appellants' proposed standard, other than to mischaracterize it. Appellants have proposed a standard that is narrowly tailored to allow federal courts to identify and invalidate the most egregious gerrymanders, while otherwise leaving the inherently political task of redistricting to the States.

I. Appellees Vastly Understate the Significance of Partisanship in Redistricting.

Appellees attempt to portray a political system so fluid that partisan affiliation matters little to politicians and even less to voters. That description defies contemporary American reality, *see* Appellants' Br. at 3-11; Grofman-Jacobson *Amicus* Br. at 2-15, and cannot be squared with the unprecedented efforts that parties now devote to redistricting.

Less than three months ago, the American Political Science Association (APSA) issued its new "Report of the Working Group on Electoral Processes," which identifies redistricting as a major cause of partisan polarization, lack of political competition, and low turnout:

> One of the least disputed facts about recent American politics is that both major political parties have used increasingly sophisticated information technology to protect incumbents during the decennial redistricting process. The result is a surge over the past two decades in the number of safe seats dominated by one party or the other.[1]

The APSA's report recommends that "the U.S. Supreme Court make[] it easier to find political gerrymandering" by reaffirming the justiciability of partisan-gerrymandering claims and then enunciating a new standard allowing "individuals or parties to successfully challenge a districting plan on the basis of partisan fairness."[2]

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[1] APSA Standing Committee on Civic Education and Engagement, *Report of the Working Group on Electoral Processes* 8-9 (Aug. 2003), *available at* http://archive.allacademic.com/publication/search.php *or* http://www.apsanet.org (2003 Meeting Papers PROceedings).

[2] *Id.* at 17.

II. Appellants Belong to an "Identifiable Political Group."

The *Bandemer* plurality required plaintiffs to show "intentional discrimination against an *identifiable political group* and an actual discriminatory effect on that group." 478 U.S. at 127 (emphasis added). Appellants alleged that they were Pennsylvania citizens who usually vote for Democratic congressional candidates over Republican ones. J.S. App. 128a-129a. The District Court correctly held that this met the "identifiable political group" requirement because the group's "geographical distribution is sufficiently ascertainable" to permit gerrymandering. J.S. App. 32a. But Appellees, seeking affirmance on an alternative ground rejected below, claim they cannot identify the "[u]ndefined 'Democratic voters'" whose constitutional rights are at stake here. Jubelirer Br. at 5-6; *see also id.* at 11-15, 18-20, 31-35.

Appellees first assert that Appellants do not belong to an identifiable political group because a preference for Democratic congressional candidates is not an "observable characteristic" and hence Democratic voters are not "objectively identifiable." *Id.* at 6, 15, 36. That claim cannot be taken seriously. Two years ago, when Senator Jubelirer and his colleagues were crafting this gerrymander, they had little trouble locating their targets. They split 29 counties and 81 municipalities, surgically excising pockets of Democratic voters and then packing them into the minimum number of districts, so that the remaining districts would all be safely Republican. It ill behooves these legislators, having orchestrated such a scheme, to come to this Court feigning confusion about the makeup of the mysterious class of "Democratic voters" and denying that their intended victims are "identifiable." The menagerie of creatures suggested by this map – the "supine seahorse," the "upside-down Chinese dragon," etc. – owes its very existence to Appellees' well-honed ability to find and target

those "Democratic voters" whom Appellees now claim are so elusive.[3]

Appellees next argue that supporting Democratic congressional candidates at the polls cannot convert a group of voters into an "identifiable political group" because partisan preference, unlike race, is "highly mutable." Jubelirer Br. at 15; *see id.* at 36. But this argument proves too much: If, under *Bandemer*, partisan gerrymandering is justiciable, then "immutability" simply cannot be the touchstone for "identifiable political group" status. *See Bandemer*, 478 U.S. at 125. More generally, under the First and Fourteenth Amendments, discrimination based on "highly mutable" characteristics like partisan affiliation and political viewpoint is subject to strict scrutiny. *See* Appellants' Br. at 23-25; ACLU *Amicus* Br. at 20-22.

III. Appellants' Proposed Standard Avoids the Twin Dangers of "Proportional Representation" and Judicial Unmanageability.

What is most striking about Appellees' briefs is that they propose *no* meaningful alternative test or standard to be applied in partisan-gerrymandering cases. Rather, they spend their briefs trying to attack Appellants' proposed standard, generally by mischaracterizing it as a demand for

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[3] Appellees' suggestion that party *registration* is the only "objectively identifiable" indicia of partisan affiliation, Jubelirer Br. at 6, is meritless. As the Cortés Appellees concede, Pennsylvania election results often "do not reflect registration figures." Cortés Br. at 6; *see also Easley v. Cromartie*, 532 U.S. 234, 244-45 (2001). Furthermore, 22 States do not even allow voters to register by party. *See CQ's Politics in America 2004 passim* (David Hawkings & Brian Nutting eds., 2003). So a test applicable only to a political party's *registrants* – rather than its actual voters – could not be applied nationwide. *See generally Bandemer v. Davis*, 603 F. Supp. 1479, 1492 (S.D. Ind. 1984) (three-judge court) (finding "Democratic voters" to be a "politically salient class"), *rev'd on other grounds*, 478 U.S. 109 (1986).

"proportional representation" or as judicially unmanageable. Those attacks are baseless.

A. Majority Rule, Unlike "Proportional Representation," Is Grounded in the Constitution.

Appellees' principal tack is repeatedly to mischaracterize this appeal as a demand for "proportional representation." Cortés Br. at 10, 15-16, 22-25; Jubelirer Br. at 30-31, 47. That is a straw man.

Appellants defend the constitutional principle of majority rule, not the extra-constitutional policy of proportional representation. In America, no political, racial, or socioeconomic group has a constitutional right to proportional representation. *See Bandemer*, 478 U.S. at 130-32 (plurality opinion). But the Constitution does prohibit gerrymanders that are so severe that they frustrate majority rule.

Wielding the force of their ideas and the character of their candidates, political parties compete for majority support in the electorate. Any party that earns a majority of the vote should have at least a fighting chance to become the governing party, with a majority of seats. Redistricting plans that repeatedly invert voting minorities into governing majorities are unconstitutional because they thwart the will of the majority. The "'essence of our republican arrangement'" is that voting minorities lose and voting majorities win. *Holder v. Hall*, 512 U.S. 874, 901 n.10 (1994) (Thomas, J., concurring in the judgment) (citation omitted). If a popular majority has no realistic prospect of converting its strength at the polls into political power, then our system does not deserve to be called either a "democracy" or a "Republican Form of Government."

This Court has a long history of defending the constitutional principle of majoritarianism in the context of

redistricting. In the early 1960s, malapportionment in many States allowed fewer than 40% of the voters (usually from rural regions) to control an outright majority of seats. *See generally* Robert G. Dixon, Jr., *Democratic Representation: Reapportionment in Law and Politics* 589-628 (1968). The seminal one-person, one-vote cases – *Baker v. Carr*, *Wesberry v. Sanders*, and *Reynolds v. Sims* – all stand for the proposition that the normal political processes could not be relied on to protect the voting rights of the majority against redistricting abuses. Judicial review was needed because "our elected representatives . . . have an obvious vested interest in the status quo." John Hart Ely, *Democracy and Distrust* 117 (1980).

Even Appellees must concede that judicial intervention was warranted in the one-person, one-vote cases, because malapportionment presented "a self-perpetuating breakdown of the political process itself." Cortés Br. at 20. But the same can be said for partisan gerrymandering today. In Pennsylvania and a handful of other States where one party has abused its control of the redistricting process, "the majority of the people" have been left with "no practical opportunities for exerting their political weight at the polls to correct the existing invidious discrimination. . . . The majority of voters have been caught up in a legislative straight jacket." *Baker v. Carr*, 369 U.S. at 258-59 (Clark, J., concurring).

In *Bandemer*, the Court extended the logic of *Baker v. Carr* to make partisan-gerrymandering claims justiciable: "[O]ur general majoritarian ethic and the objective of fair and adequate representation recognized in *Reynolds v. Sims*" prohibit districting plans that "consign[majorities] to minority status." *Bandemer*, 478 U.S. at 126 n.9 (citing *Reynolds*, 377 U.S. 533, and *Baker*, 369 U.S. at 217). But the lower courts have effectively nullified that holding,

leaving majoritarianism unprotected. *See* Appellants' Br. at 3-4 (citing J.S. App. 39a).

The risk that gerrymandering poses to majority rule and democratic accountability multiplies further when redistricting becomes a *biennial* process, as it now threatens to do in Texas and Colorado. With biennial redistricting, partisans need look ahead only one election cycle, rather than five. If an unanticipated popular trend emerges in the next election, they can fine-tune their gerrymander before the following election and thus stay one step ahead of the voters.

Appellees' proposed regime – prohibiting malapportionment that thwarts majority rule while permitting gerrymanders (even biennial gerrymanders) that inflict similar harms – works about as well as half a pair of pliers. This case presents the opportunity to complete the unfinished business that began with *Baker*, *Reynolds*, and *Wesberry*.

To see why vindicating this constitutional principle of majoritarianism does not demand proportional representation, it may be helpful to examine a hypothetical example where a perfectly lawful map can generate a disproportionate outcome. Imagine a State with five districts that are 46, 48, 50, 52, and 54 percent Republican, respectively, in an average election where the parties are evenly divided statewide. If, in a given year, Republican candidates run strong campaigns and thereby attract additional support from the electorate, they could receive 55 percent of the vote statewide, yet walk off with 100 percent of the seats, while Democrats (with 45 percent of the vote) would win nothing. Although far from proportional representation, this result is fully compatible with majoritarianism. The map should be upheld, as it presents no threat to majority rule. Rather, the disproportionality between votes and seats comes from the traditional "seats bonus" that stronger parties routinely earn under winner-take-all, district-based electoral systems. *See*

Bandemer, 478 U.S. at 130 (plurality opinion). Where, as in this hypothetical, many districts are competitive, stronger parties typically get supra-proportional representation and weaker parties get sub-proportional representation. There is nothing unconstitutional about that.

B. Appellants Have Proposed a Workable Standard for Singling out the Most Severe, Majority-Thwarting Partisan Gerrymanders.

Given Appellees' frequent misstatements, it seems useful to restate exactly what standard Appellants propose. The standard flows directly from the constitutional principle it is designed to vindicate: majority rule. *See Bandemer*, 478 U.S. at 126 n.9. It requires a clear showing that a redistricting plan was intentionally designed to hand one party a majority of seats whether or not that party's candidates earn majority support from the voters.

More specifically, it requires plaintiffs to satisfy an "intent" element and an "effects" element. *See* Appellants' Br. at 30-48. Under the intent element, plaintiffs must show, by either direct or circumstantial evidence, that achieving partisan advantage was the predominant motivation behind the statewide redistricting plan. *See id.* at 31-33, 41-43, 45. The inquiry here is no different in principle from the analysis of line-drawers' predominant intent in cases where plaintiffs allege either intentional dilution of minority voting strength or racial gerrymandering. *See, e.g.*, *Miller v. Johnson*, 515 U.S. 900 (1995); *Shaw v. Reno*, 509 U.S. 630 (1993).

Under the effects element, plaintiffs must show that the plan (1) systematically "packs" and "cracks" one party's voters, and (2) would consistently prevent that party from winning a majority of seats even if its candidates repeatedly earned a narrow majority of votes statewide. *See* Appellants' Br. at 33-41, 43-48. The effects element that Appellants propose has two chief benefits. First, because it

is extremely hard – but not impossible – for plaintiffs to satisfy, it will distinguish the truly egregious gerrymanders from the everyday use of partisanship in redistricting. Second, the standard flows directly from, and is tightly tethered to, the constitutional value at stake here – majority rule.

Appellants have also described one way in which experts and courts could go about establishing the requisite effects. Although we do not claim it is the only constitutionally acceptable methodology, it is useful to show that there is at least one manageable approach to the problem. A review of that methodology further demonstrates its tight linkage to the goal of preserving majority rule.

Step One. The first step in assessing whether an alleged gerrymander systematically packs and cracks one party's voters is to identify the body of relevant elections. In a challenge to a congressional map, the focus ordinarily should be on the entire set of *statewide* general elections (for offices such as President, U.S. Senator, Governor, and so forth) that appeared on the ballot with congressional elections in the last decade. Those are the data used by consultants who design gerrymanders and by political scientists who evaluate them – including the experts for both Appellants and Appellees. *See* JA 32-45, 218-19. A statewide election is particularly revealing because the same Republican candidate and the same Democratic candidate square off in every precinct in the State. And their vote totals cannot be affected by gerrymandering, because they run at large.[4] Furthermore, reaching back a full decade

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[4] One might think that the best evidence of a party's voting strength would come from congressional elections held under the challenged map. But that approach is problematic, for three reasons. First, it would require that even the most severe gerrymander be used for an election

continued

makes sense because it captures a large sample of statewide contests and because ten years is the period that the Framers established for congressional reapportionment and redistricting. *See* U.S. Const. art. I, § 2, cl. 3. Pennsylvania had 18 such elections in the decade preceding redistricting; and Appellants' expert, Professor Lichtman, presented evidence that these 18 statewide elections were excellent predictors of congressional-election outcomes. *See* JA 32-45, 269-71.

Step Two. The second step in checking for systematic packing and cracking is to compute, for each statewide election from the last decade, how the candidates performed in each district under the challenged map. For any given district in any given plan, one can easily calculate accurate vote totals by simply adding up the votes each statewide candidate received in the precincts that fall within the district. *See* JA 273-76. For example, in Pennsylvania's November 2000 general elections, the closest statewide election was the contest for State Treasurer, in which Republican incumbent Barbara Hafer narrowly defeated Democratic challenger Catherine Baker Knoll. J.S. App. 138a. Plugging the precinct-by-precinct vote totals for that election into the challenged district map enacted a year later reveals that Hafer's district-level returns varied from 15.02% of the vote in District 2 to 67.84% of the vote in District 19. JA 274.

Step Three. The third step is to "normalize" each statewide election to simulate a 50-50 contest and then to

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cycle or two before it could be challenged. Second, even when available, these results can be misleading because they are tainted by the gerrymander itself (as will be shown below, as to Pennsylvania's 2002 congressional returns). JA 33-34. Third, using congressional returns – whether from elections held under the challenged map or under its predecessor – requires "apples and oranges" comparisons of districts with no incumbents, districts with strong challengers, districts with weak challengers, and districts where incumbents ran unopposed. *Id.*

add up the number of seats that each candidate would have won. A 50-50 election (where the two candidates are effectively "tied" statewide) is the litmus test for determining whether a party's majority share of the seats flows from disparate packing and cracking of the rival party's voters, as opposed to the legitimate "seats bonus" that winner-take-all, district-based systems typically generate. *See supra* pages 7-8. At 50-50, neither party gets the bonus that comes from being the more popular party. And at 50-50, each party should have at least a fighting chance of winning half or more of the seats.[5] When the two parties are effectively "tied" statewide, a redistricting plan intentionally crafted to consistently reward one party with far more seats than the other offends our Constitution's "general majoritarian ethic." *Bandemer*, 478 U.S. at 126 n.9.

In Pennsylvania's 2000 Treasurer's contest, on average (across the 19 congressional districts), the Republican Hafer got 50.78% of the major-party vote and her Democratic opponent, Knoll, got 49.22%. So to simulate a 50-50 contest, one can "normalize" the results by adding 0.78% to Knoll's percentage and subtracting 0.78% from Hafer's percentage in each district. That simulates what would have happened in a "tied" election. Here, the Republican candidate (Hafer) would have carried 12 of the 19 congressional districts under the challenged map, while the Democrat (Knoll) would have carried only 7 districts. That disparity reflects the extraordinary degree to which the voters who could have formed a Democratic majority for Knoll were "packed" into 7 districts and "cracked" among the remaining 12.

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[5] *See* Charles Backstrom, Leonard Robins & Scott Eller, *Establishing a Statewide Electoral Effects Baseline* in *Political Gerrymandering and the Courts* 145, 159-65 (Bernard Grofman ed., 1990).

Step Four. The next step is to apply Steps Two and Three to all the other statewide elections identified in Step One, to check for a *systematic pattern* of packing and cracking. In each statewide contest, "'issues, candidates, personalities, unusual party effort, and other contingent factors,'" Cortés Br. at 23-24 (citation omitted), generate a slightly different geographic, or spatial, distribution of Republican and Democratic voting strength. But a severe, majority-thwarting gerrymander will be effective under almost *any* of these distributions.

The vast bulk of redistricting plans will not exhibit *systematic* packing and cracking; once normalized to 50-50, some statewide elections will show a slight Republican tilt, and others will show a slight Democratic one. But for Pennsylvania's 18 relevant elections, each of which was "normalized" to simulate a statewide "tie," Appellants' expert, Professor Lichtman, found a stark pattern: With half the votes, Republican candidates would have carried between 11 and 14 districts in every contest, with no exceptions, while Democratic candidates would have carried only 5 to 8 districts. *See* Appellants' Br. at 46-47 & n.34. Appellees cannot point to a *single* recent statewide contest contradicting this pattern of disparate packing and cracking.

Step Five. The fifth and final step is to appraise the "totality of circumstances" that might bear on the issue of partisan gerrymandering. Here, the inquiry turns to other factors – such as the treatment of each party's incumbents – that can aggravate or mitigate the anti-majoritarian effects of disparate packing and cracking. *See* Appellants' Br. at 36-37, 40-41, 47-48.

As noted, there may be other ways to distinguish between the appropriate use of politics in redistricting and the excessive use that consistently frustrates majority rule. But under any reasonable standard, the allegations in this case – that the Pennsylvania General Assembly abandoned

every neutral redistricting principle in a single-minded effort to entrench one party's control over a supermajority of seats – must survive a motion to dismiss.

C. Appellees' Specific Critiques of This Standard Are Baseless.

Appellees toss out a long series of criticisms of this proposed legal standard, again without proposing a meaningful alternative. Their critiques are misplaced.

First, Appellees incorrectly assume that the test would apply only to closely divided States like Pennsylvania, where elections actually approach the 50-50 mark. *See* Cortés Br. at 24-25; *see also* Jubelirer Br. at 2, 5 & n.11, 23 & n.21. In fact, the test applies to any redistricting plan and seeks to ascertain whether one party would be denied a majority of seats *if* it received a narrow majority of votes statewide. One can never know for sure which party will earn majority support in some *future* electorate, but a redistricting plan should not foreclose *either* party from capturing a majority of seats if it eventually earns a majority of votes. To satisfy the effects element, "plaintiffs must show that the plan needlessly undermines the democratic accountability of elected representatives to *shifting* majoritarian preferences." Appellants' Br. at 34 (emphasis added). The voting strength of the plaintiffs' political party at the time they file their complaint or try their case, *see* Jubelirer Br. at 1-3, is irrelevant.

Second, Appellees argue that the proposed standard is too "subjective." Cortés Br. at 24. But focusing on all normalized statewide elections from the prior decade provides a clear test that will generate consistent results regardless of which judge applies it or which expert witness presents the data. Furthermore, it is an extraordinarily stringent rule, yet it will accomplish its mission: to distinguish run-of-the-mill partisanship from the truly egregious examples of gerrymandering – those capable of

repeatedly inverting a voting minority into a governing majority.[6]

Third, Appellees claim that Appellants' standard requires States to "maximize competition at the district level . . . [rather than] to maximize the protection given to incumbents, with their accumulated experience and seniority." Cortés Br. at 28; *see also* Jubelirer Br. at 26-27. Appellants have made no such suggestion. The Constitution may or may not require States to create competitive districts rather than favoring the reelection of all incumbents, but what certainly lacks constitutional legitimacy is for a State intentionally to thwart majority rule by protecting one party's incumbents while targeting the other party's incumbents for defeat. Of course, that is precisely what the Pennsylvania legislature did here, as it effectively paired 5 of the 10 Democratic incumbents, but only 1 of the 11 Republican incumbents, while simultaneously drawing a map that would strongly favor the Republicans even if every incumbent retired. *See* Appellants' Br. at 13-14, 43-48.

Fourth, Appellees also mischaracterize the proposed test by suggesting that it *assumes* a tight correlation between statewide and congressional election returns. *See* Jubelirer Br. at 39. But that also is not true. Rather, plaintiffs must

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[6] Appellees' discussion of Texas, *see* Jubelirer Br. at 44-46, not only wanders far from the facts of this case, but also displays the kind of fuzzy thinking that Appellants' proposed standard avoids. The map drawn in 2001 by the three-judge district court and summarily affirmed in *Balderas v. Texas*, 536 U.S. 919 (2002), would not come close to qualifying as a "Democratic gerrymander" under Appellants' test. The methodology described above reveals that the Texas court's map actually has a slight pro-Republican tilt, with 17 or 18 districts that would lean Republican in a 50-50 statewide contest and 14 or 15 districts that would lean Democratic. In the November 2002 elections, Democrats carried a narrow majority of congressional seats as they won all but one of the closest races under the court-drawn map.

prove the correlation, as Appellants did here. Professor Lichtman analyzed election returns in each of Pennsylvania's 9,427 precincts, for each of the last five election cycles, and found extremely high correlations between congressional and statewide results. *See* JA 38-44, 269-71; *see also* Appellants' Br. at 8 & n.12 (describing how partisan voting patterns nationwide have become more consistent from office to office and from election to election). Indeed, using statewide election results, Professor Lichtman correctly predicted 18 of last year's 19 congressional contests in Pennsylvania (the lone exception being District 17, *see* Appellants' Br. at 48 & n.35). And he also correctly predicted 15 of 15 congressional contests in Michigan and 25 of 25 in Florida, the two other States where he testified on behalf of plaintiffs raising partisan-gerrymandering claims. *See* Tyler Bridges, *Remap Key to GOP's Victory*, Miami Herald, Dec. 1, 2002, at B1. That record belies Appellees' contention that gerrymandering is "self-limiting" because electoral behavior cannot accurately be predicted. *See* Jubelirer Br. at 30, 38; Cortés Br. at 23 n.9.

Fifth, Appellees launch several attacks on the sufficiency of the evidence that Appellants presented below. In so doing, they tout the fact that Republican candidates garnered 56.2% of the votes cast for Congress in Pennsylvania in November 2002, while Democrats garnered only 41.5%. *See* Cortés Br. at 6; Jubelirer Br. at 4. The party that captured a majority of seats, they note, was also the party whose candidates won a majority of votes. As a matter of law, those figures are irrelevant because the political-gerrymandering claims in Appellants' complaint, drafted long before November 2002, were dismissed for failure to state a cognizable claim and hence Appellants had no opportunity to contest this point.

But on remand, Appellants would show that the 2002 figures are highly misleading because they fail to account for

the impact that *the gerrymander itself* had on the vote totals. *See* Appellants' Br. at 38 n.32. As the complaint makes clear, aggregating congressional votes statewide, Democrats took a narrow majority in the November 2000 elections held under the districting plan that the Pennsylvania Supreme Court had adopted in 1992. *See* J.S. App. 137a. But by the time the November 2002 general elections were held, the newly enacted gerrymander had decimated the cores of most Democratic incumbents' districts while leaving intact most of the Republican incumbents' district cores, and had caused the primary-election defeat or forced retirement of three Democratic incumbents (Congressmen Borski, Coyne, and Mascara) but no Republican incumbent.[7] So by November 2002, only 19% of all Pennsylvania voters had the opportunity to vote for a Democratic incumbent who already represented them in Congress. *See* JA 272. Given that incumbency typically provides a five- to twelve-point edge, *see* Appellants' Br. at 40, the systematic destruction of the Democrats' incumbency advantages sharply deflated the party's vote totals.

Furthermore – consistent with Appellants' prediction that gerrymandering would hurt Democratic candidate recruitment, *see* J.S. App. 141a – in five districts, Democratic prospects under the newly gerrymandered map

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[7] Appellees disingenuously assert that a "desire to receive 'pork' may explain the curiously-shaped 12th District." Jubelirer Br. at 26 n.22. District 12 – which borders four districts, all of which are now held by Republicans – was designed to "pack" into just one district the Democratic voters who previously had formed the heart of two reasonably compact, competitive, but Democratic-leaning districts represented by Congressmen Murtha and Mascara. *See* J.S. App. 166a, JA 260 (color maps). The elimination of one of those districts and the packing of rural southwestern Pennsylvania's Democratic voters into new District 12 led to Democratic Congressman Mascara's defeat in 2002. *See* JA 51, 56, 123-28, 161-70.

were so dismal that no Democratic candidate filed for office. *See* Appellants' Br. at 38 n.32. By contrast, only one Democrat ran unopposed. The Republicans' supposed 56.2%-to-41.5% advantage in popularity was heavily inflated by this five-to-one differential in races where the vote tally was 100% to 0%.

In any event, Appellees have not denied or even responded to the most telling fact about the 2002 congressional returns: Republicans would have retained control of Pennsylvania's congressional delegation even if Democrats had done 10 points better (and Republicans had done 10 points worse) in every precinct in the State. Appellants' Br. at 49. Thus, because of the uneven playing field that the gerrymander itself created, Democrats could have had a sizable majority of the vote statewide yet carried less than half the seats.

Appellees also attack Professor Lichtman for failing to analyze the congressional districts using statewide *judicial* contests. Jubelirer Br. at 38-39. He did so principally because those elections are held in odd years, when congressional contests are not on the ballot and turnout is much lighter. *See* JA 108-09. In any event, analyzing statewide judicial elections here would only confirm the systematic packing and cracking of Democratic voters. For example, in the most recent Pennsylvania Supreme Court election, in November 2003, Democrat Max Baer captured nearly 52% of the vote, yet carried less than 32% of the congressional districts (6 out of 19).[8]

Sixth and finally, the Alabama Democratic *amici* raise the specter of "potential conflicts" between Appellants' proposed standard and minority voters' rights. Alabama

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[8] *See* 2003 Pennsylvania Judicial Elections, *available at* http://www.fairvote.org/penn/judicial.htm.

Democrats' Br. at 4, 13. But that concern is also misplaced. In Pennsylvania, for example, Appellants presented alternative plans that lacked the extreme partisan bias of the challenged plan, paid far more respect to compactness, municipal boundaries, and other traditional districting principles, *see* Appellants' Br. at 48 – and also preserved the majority-minority districts in the Philadelphia area.

Moreover, across the Nation, the least competitive districts in general elections often are heavily minority districts that "pack" African-American or Latino voters and, in some instances, arguably violate the *Shaw* doctrine's prohibition against the excessive and unjustified use of race. Plans that reject racial segregation and enhance minority representation by "unpacking" overwhelmingly minority districts are thus more likely to reduce partisan bias by also "unpacking" Democratic voters. *See, e.g., Page v. Bartels*, 144 F. Supp. 2d 346, 348-69 (D.N.J. 2001) (three-judge court); *Robertson v. Bartels*, 148 F. Supp. 2d 443, 455-58 (D.N.J. 2001) (three-judge court), *summarily aff'd*, 534 U.S. 1110 (2002). Thus, if the standard proposed here has any significant impact on minority voters, it would likely be to *enhance* their representation. *See Georgia v. Ashcroft*, 123 S. Ct. 2498, 2511-17 (2003).

At bottom, the Alabama *amici*'s argument seems better calculated to protect the Democrats' 25-to-10 advantage in the Alabama Senate than to empower African-American voters. But under our Constitution, Democratic legislators in Alabama have no more authority to thwart majority rule than do Republican legislators in Pennsylvania.

IV. Appellants' Article I Argument Flows Directly from *Wesberry* and Its Progeny.

Appellees fundamentally misperceive Appellants' Article I claim by ignoring the relationship between Sections 2 and 4 of that Article. *See, e.g.*, Cortés Br. at 30-31. The complaint alleged that the Pennsylvania legislature exceeded

its Section 4 (Elections Clause) authority to regulate the time, place, and manner of congressional elections when it drew a redistricting plan to favor one class of candidates and to dictate electoral outcomes – because that deprived "the People of [Pennsylvania]" of their constitutional right *under Section 2* to freely elect their preferred candidates to the House of Representatives. *See* Appellants' Br. at 1, 15, 19, 25-29; J.S. App. 130a-131a, 144a. Appellees counter that only Congress, not the courts, can constrain the state legislatures' power to draw congressional districts. *See* Jubelirer Br. at 33-34 & n.28, 40-42, 42 n.32. But, if they are right, then *Wesberry v. Sanders*, 376 U.S. at 5-18, and the entire line of Article I malapportionment cases would have to be overruled.[9]

In *Wesberry*, this Court held that the 1931 statute establishing Georgia's congressional districts violated Article I because – given massive population shifts in the intervening decades – it deprived "the People of [Georgia]" of their constitutional right to cast undiluted votes for their Representatives in Congress and potentially allowed 39% of the voters to control half the State's congressional delegation. 376 U.S. at 5-18 (citing U.S. Const. art. I, §§ 2, 4). Congress could not be trusted to safeguard "the right of citizens to vote for Congressmen," so the Court stepped in. *Id.* at 6. The Court therefore interpreted Sections 2 and 4 of Article I as imposing judicially enforceable limits on congressional redistricting plans. *See id.* at 5-18. *Wesberry* and its progeny were correctly decided and should not be overruled.

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[9] *See, e.g., Karcher v. Daggett*, 462 U.S. 725 (1983) (relying on *Wesberry* to strike down a congressional plan); *White v. Weiser*, 412 U.S. 783 (1973) (same); *Wells v. Rockefeller*, 394 U.S. 542 (1969) (same); *Kirkpatrick v. Preisler*, 394 U.S. 526 (1969) (same).

Finally, ignoring Appellants' reliance on Section 2, Appellees assert that the "Court has never held that a state law violated Article I, § 4 itself." Cortés Br. at 12. But even if relevant, that assertion would be flatly wrong. That is precisely what this Court did in *Cook v. Gralike*, 531 U.S. 510 (2001), when it struck down the Missouri law placing on the face of the ballot each congressional candidate's position on the issue of term limits. The Court noted that States exceed their Elections Clause authority whenever they manipulate the political process to "dictate electoral outcomes [or] favor or disfavor a class of candidates." *Id.* at 523. Contrary to Appellees' assertion, Cortés Br. at 33, the gerrymander at issue here has a similar purpose: to favor one class of candidates and thus to dictate a majority-Republican congressional delegation regardless of the preferences of most Pennsylvania voters.

CONCLUSION

The Court should reverse the judgment below and remand the case for further proceedings.

Respectfully submitted,

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RICHARD VIETH, *et al.*,

Appellants,

v.

ROBERT C. JUBELIRER AND JOHN M. PERZEL, *et al.*,

Appellees.

On Appeal From The United States District Court For The Middle District Of Pennsylvania

BRIEF OF THE CENTER FOR RESEARCH INTO GOVERNMENTAL PROCESSES, INC. AS *AMICUS CURIAE* IN SUPPORT OF APPELLANTS

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INTEREST OF AMICUS[1]

The Center for Research into Governmental Processes is a 501(c)(3) incorporated under the laws of Ohio in 1989 and dedicated to non-partisan research and education on how to liberate political democracy from partisan manipulation in the districting process. Its advisory board is composed of Ohio political scientists, current and past members of the Ohio General Assembly and Congress, and citizens with long-standing concern for healthy democracy.

The director, one of the trustees, and two of the advisory board members were among a group of Ohio citizens who in 1975-78 began searching for a workable alternative to discretionary districting which intimate acquaintance with Ohio politics had convinced them was a cancer on the body politic. Their labors led, in 1978, to introduction in the Ohio House of Representatives of the first proposal in American history to completely remove political discretion from the process of drawing state legislative and Congressional districts. As this proposal, called "the Ohio Anti-Gerrymander Amendment," gained attention, questions arose concerning its workability and its political consequences.

The Center's first policy investigation thus focused on the feasibility and political consequences of impartial districting procedures. With grants totaling $42,000 from the George Gund Foundation, the Center in 1989 and 1990 conducted "districting competitions" in Ohio and Indiana

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[1] This brief was not authored in whole or in part by counsel for a party, and no person or entity other than amicus curiae, its members, or its counsel made a monetary contribution to the preparation or submission of the brief. With the consent of the parties indicated in letters being lodged with the Clerk, amicus respectfully submits this brief.

to generate both federal and state legislative districting plans drawn to satisfy objective, quantifiable criteria. These plans were then analyzed under tests for partisan bias proposed by various scholars and compared to the plans in effect in those states. This methodology led to the Director's being an invited panelist at the 1988 meeting of the American Political Science Association (APSA), and to paper presentations by Center associates at the next three meetings of the APSA. The Director has published a journal paper, is currently working on the manuscript of a book to be titled *Gerrymander Analysis and Remedy*, and has drawn many districting plans.

The Center believes it may serve the public interest to bring the matter of impartial districting procedures to the attention of this Court. It also wishes to lend support to two legal theories which, if embraced by this Court, would put an end to two centuries of political gerrymandering in the United States of America and do it without leading the Court into a political quagmire.

INTRODUCTION AND SUMMARY OF ARGUMENT

Sometimes Americans unschooled in law assume that certain fundamental principles govern the functioning of democracy in America, and take it for granted that these principles have been recognized and embodied in legal doctrine. Governmental neutrality in the electoral process is just such a principle that most Americans readily think is part of our constitutional framework.

If one asks the person on the street whether it is constitutional for a state government to take sides in an election between two candidates or two parties – which is what discriminatory districting ("gerrymandering") boils down to – the answer is likely to be "of course not!" Surely having the government take sides in an election is contrary

to democratic commitment to rule by the people. Countless Supreme Court cases effectively validate this reaction, but this Court has never *formally* recognized a neutrality principle in the electoral field. It has never explicitly declared that the proper role of the state in an electoral contest is that of neutral umpire rather than as a member of one of the teams or a cheerleader for this or that side.

When *Davis v. Bandemer* was before this Court eighteen years ago, Arthur Eisenberg and others, writing for the American Civil Liberties Union as *amici curiae*, extracted from the case law a general theory of governmental neutrality in religious and political controversies. Citing additional cases, they extended this theory into the realm of electoral process and concluded that the districting plan at issue in *Bandemer* violated this governmental neutrality principle and, therefore, must be voided. This Court concluded otherwise.

In the first part of the argument *amicus* revisits this neutrality principle and finds the logic of it more compelling than ever and invokes recent major cases to suggest its application to the electoral process.

In the second part of the argument *amicus* demonstrates that the Framers intended the U.S. House of Representatives to "be dependent on the people *alone*." The state legislatures were to have no substantive influence over the selection of U.S. representatives. Yet, by means of discretionary political districting today, states play a significant and often the dominant role in selecting representatives to the House.

This Court reaffirmed the principle that states are forbidden to have substantive influence over the selection of U.S. representatives in *U.S. Term Limits v. Thornton*. Judge Paul V. Niemeyer of the Fourth Circuit has independently reached the same conclusion as *amicus* about the meaning of state legislative gerrymandering for

interference with the people's right to choose their own representatives.

The third part of the argument addresses the question of remedy. First, any claim of partisan gerrymandering will falter if it turns on an effort to assert a right of guaranteed *group* representation based on ideology; no such right exists. An alternative approach is suggested based on *individual* rights. Such rights require only that a districting plan be crafted in an impartial manner that treats every citizen equally, not that it afford mathematically proportional representation to every "cognizable" group, which is a potentially infinite class. An impartial, nondiscretionary districting procedure employing objective, and quantifiable criteria to define the "best" plan provides a sound, workable and equitable remedy. A detailed description of one such procedure is provided in the appendix. The point is that there are multiple effective ways to remove political discretion from state legislatures either by [1] maintaining single-member districts but requiring neutral processes and principles to be observed in the line-drawing process or [2] adopting systems of proportional representation such as preferential, cumulative or "instant runoff" voting.

ARGUMENT

I. PENNSYLVANIA'S CONGRESSIONAL DISTRICTING PLAN VIOLATES CONSTITUTIONAL NEUTRALITY PRINCIPLES ROOTED IN THE FIRST AMENDMENT AND THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

A. General Neutrality Principles

In their *amici curiae* brief in *Davis v. Bandemer*, Eisenberg, *et al.*, developed a general theory of governmental neutrality in religious and political controversies from

eight cases involving governmental regulation of speech-making access to streets, sidewalks and parks; patronage dismissals; and access to meeting rooms in schools and universities. (Eisenberg, *et al.*, pp. 9-16).

They might have cited a ninth case in which this Court laid down the neutrality principle in the simplest and broadest of terms. In *New York City Transit Authority v. Beazer*, 440 U.S. 568, 587 (1979), Justice Stevens, writing for a Court majority, articulated what can only be characterized as a general, unqualified principle of governmental neutrality:

> The Equal Protection Clause . . . announces a fundamental principle: the State must govern impartially. General rules that apply evenhandedly to all persons within the jurisdiction unquestionably comply with this principle. Only when a governmental unit adopts a rule that has a special impact on less than all the persons subject to its jurisdiction does the question whether this principle is violated arise.

At issue was whether the Transit Authority's policy of refusing employment to persons currently receiving methadone treatment for curing heroin addiction violated the Equal Protection Clause. The Court majority, plus Justice Powell in concurrence, concluded that it did not. Dissenting Justices White, Brennan, and Marshall concluded that it did. Neither the concurrence nor the dissent differed with the Stevens majority over its assertion of the impartiality mandate. The disagreement was over whether it was being adhered to in the instant case. Therefore, Justice Stevens was essentially speaking for a unanimous Court when he made this declaration. He repeated it, without qualification, in the context of a discussion of partisan gerrymandering in *Karcher v. Daggett*, 462 U.S. at 748.

When plaintiffs in a political gerrymandering case seven years ago invoked the governmental neutrality principle, the lower court disposed of plaintiffs' assertion of the governmental neutrality principle in two sentences:

> "While we acknowledge that the 'concept of government as neutral referee' has been articulated in the context of specific constitutional claims, it has not yet been recognized as a discrete constitutional right. Mindful of our role as the trial court, we decline to grant relief premised on an as yet undefined constitutional right."

Miller v. Ohio, No. C2-94-1116, slip op. at 10 (S.D. Ohio, May 29, 1996), *aff'd*, 519 U.S. 1003 (1996).

B. The Neutrality Principle Applied to the Electoral Process

Eisenberg, *et al.*, in their brief demonstrated that the neutrality principle had been extended into the electoral realm by citing seventeen additional cases. They asserted:

> "The neutrality principle acquires a special force in cases involving regulation of our electoral system. In a very real sense, our electoral system is simply a more formalized and structured marketplace of expression. It is an organized competition of ideas presented by opposing candidates and political parties. As such, the obligation of governmental neutrality takes on heightened importance. For unless government remains neutral in fashioning and administering the rules of the contest, the electoral competition cannot operate fairly.
>
> "If a state were to rig voting machines so that they could only register the votes for Democratic candidates, no one would doubt that the state was not playing fairly, in a clear violation of neutrality principles. Although acts of favoritism by the state will rarely, if ever, be that transparent, courts have carefully scrutinized, and where appropriate invalidated, legislative enactments obviously designed to favor particular parties or groups." Eisenberg, *et al.*, pp. 16-17.

The object of political speech is to persuade the body politic to support or oppose a particular public policy. If the people one has persuaded are not permitted to vote, or the value of their vote is diminished or destroyed by one or another species of discriminatory electoral mechanism, then the motivating political ideas and expression are being nullified and the people are being usurped by the government. This inversion cuts against the most central commitments of democracy. As Justice Robert Jackson cogently put it in *West Virginia v. Barnette*, "Authority here is to be controlled by public opinion, not public opinion by authority. . . . If there is any fixed star in our constitutional constellation, it is that no official, high or petty, shall prescribe what shall be orthodox in politics . . . " 319 U.S. 624, 641-642 (1943).

The foregoing reasoning proceeds from the First Amendment, standing by itself. A simpler line of reasoning, proceeding from the Fourteenth Amendment's Equal Protection Clause, bolsters the centrality of the governmental neutrality principle. The Court in *Romer v. Evans*, 116 S. Ct. 1620, 1628 (1996), stated that the basic idea of Equal Protection is "the principle that government and each of its parts remain open on impartial terms to all who seek its assistance." To the citizens of our country this guarantee means that all citizens must be treated equally by government. Therefore, plaintiffs in a complaint alleging political gerrymandering state causes of action arising independently from the First Amendment and the Equal Protection Clause, as well as a neutrality principle arising *jointly* from these two foundation blocks. With this theoretical framework, let us now examine the case law.

C. Electoral Neutrality Principle: The Case Law

In *Hunter v. Erickson*, 393 U.S. 385 (1969) this Court invalidated a city charter provision subjecting fair housing ordinances to a unique referendum procedure as an unconstitutional attempt to rig the electoral process in such a way as to unfairly hinder "one group in its struggle with its opponents." 393 U.S. at 393 (Harlan, J., concurring). In this instance the neutrality principle meant that advocates of fair housing ordinances should not be forced to jump through more hoops than advocates of any other issue. That would mean the state was taking sides against advocates of fair housing ordinances.

In *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978) this Court overturned a statute prohibiting banks from making certain campaign expenditures in referendum elections in which interests of banks could be at stake. In so doing it regarded this attempt to prevent corporations from participating in the campaigns surrounding referendum elections as

> " . . . an impermissible legislative prohibition of [electoral] speech based on the identity of the interests that spokesmen may represent in public debate over controversial issues . . . " 435 U.S., at 784.

In this instance the neutrality principle meant that the State could not permit opponents of corporate interests to spend money in referenda while prohibiting corporations from doing so. That would mean the State was taking sides against corporations.

In *Carrington v. Rash*, 380 U.S. 89 (1965) this Court struck down a Texas constitutional provision prohibiting armed forces personnel who moved to Texas during a tour of duty from voting in that state so long as they remained in the service. The State argued that the provision was necessary to prevent military personnel from "taking over"

communities near military bases. But this Court stated that "'fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible." 380 U.S., at 94.

At issue in *Williams v. Rhodes*, 393 U.S. 23 (1968) was whether the newly-formed American Independent Party and its presidential candidate George Wallace could be placed on the Ohio ballot despite having failed to file their petitions by the State's February deadline. This Court held that Ohio's restrictive election laws taken as a whole were invidiously discriminatory and violated the Equal Protection Clause because they give the two established parties a decided advantage over new parties, *Id.*, at 30-34, and heavily burdened the First Amendment right of individuals to associate for the advancement of political beliefs and the right of qualified voters to cast their votes effectively. *Id.*, at 30-31. In this instance the neutrality principle meant that the State could not favor the Democratic and Republican parties over other parties by making it more difficult for the latter to appear on the ballot.

In *Greenberg v. Bolger*, 497 F. Supp. 756 (E.D.N.Y. 1980) a federal district court struck down the provision of the Postal Service Appropriation Act of 1980 which conferred reduced third-class mailing rates upon the Democratic and Republican parties but excluded other political parties competing for federal office in that presidential year. That court said

> Congressional debate demonstrates – what is clear from the provision itself – that the 1980 limitation was adopted to reserve the special rate for the two dominant political parties while denying it to others. 497 F. Supp., at 765.

In this instance the neutrality principle again meant – as with ballot access in *Williams* – that the State may not favor the Democratic and Republican parties over their competitors.

At the time of *Williams* there was no mechanism under Ohio law whereby one could run for office as an independent. The only way was to be the candidate of a party, and formation of a new party was a cumbersome and time-consuming process. In the wake of *Williams* the petition requirement for formation of a new party was lowered from 15 to one percent of the preceding gubernatorial vote and provision was made for independent candidates. The petition requirement for such (statewide) candidates was set at 5,000. However, the February filing deadline of *Williams* continued. In *Anderson v. Celebrezze*, 460 U.S. 480 (1983) this Court struck down this deadline that forced independent presidential candidates to file their petitions in February, whereas Democratic or Republican candidates who may not have run in the Ohio primary could be nominated at a party convention in August and still appear on the general election ballot. Thus, another ballot access case extended the neutrality principle to say that the State may not favor Democratic and Republican candidates over independent candidates.

In the area of racial discrimination the cases and issues are too numerous to elaborate. In a line of vote dilution cases stretching from *Gomillion v. Lightfoot*, 364 U.S. 339 (1960) to *White v. Regester*, 412 U.S. 755 (1973) this Court first applied the neutrality principle to political districting. The organizing theme has been that a State may not draw legislative or congressional districts to favor whites over African-Americans or Hispanic-Americans. And now, with *Shaw v. Reno*, 509 U.S. 630 (1993) and *Bush v. Vera*, 517 U.S. 952 (1996), it appears to have invoked a kind of neutrality principle to say that a State may not use race as a dominant factor in the drawing of majority African-American or Hispanic-American districts. Ironically, this vigorous line of authority has produced the anomalous state of affairs where legislatures freely draw districts to promote the reelection of white incumbents but

are forbidden to deliberately create majority African-American or Hispanic districts.

In *Gaffney v. Cummings*, 412 U.S. 735 this Court, for the first time, extended the neutrality principle, into the realm of political districting in a non-racial context. The primary issues involved population inequality and a claimed violation of a "right to participate effectively in the political process"[2] by persons living in towns fragmented by the plan. The secondary issue was a claim of partisan gerrymandering perpetrated by a nominally bipartisan board.[3] The district court did not address the gerrymandering claim, invalidating the plan on grounds of population inequality *Cummings v. Meskill*, 341 F. Supp. 139, 148, 149 (1972). On appeal to this Court, the partisan gerrymandering claim was addressed in Part III of Justice White's opinion. 412 U.S., at 751. The majority concluded that, as a matter of fact, the plan was not a partisan gerrymander, implying that if it *had* been it could have been struck down. Thus the neutrality principle was extended a few centimeters. In this instance the neutrality principle meant that a State may not draw legislative districts to favor the Republican Party over the Democratic Party – and vice versa. That would mean the State was taking sides in favor of one major party and against the other.

Thirteen years later this Court, in *Davis v. Bandemer*, 478 U.S. 109 (1986) pushed the neutrality principle a few centimeters further by affirming what *Gaffney* only implied: a State may not draw legislative districts to favor one major party over the other to a degree that would

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[2] See Plaintiffs' Complaint *Cummings v. Meskill* Civil Action No. 14,736 U.S. Dist. Ct. (D. Conn.) Allegation No. 12, pp. 8-9.

[3] *Ibid*, Allegation Nos. 15 and 16, p. 11.

mean one party has "essentially been shut out of the political process." 478 U.S., at 139. A partisan gerrymander of that severity has never been drawn and never will be drawn. Consequently, *Bandemer* will (if Defendant/Appellees prevail in the case at bar) become a dead letter. The *Bandemer* plaintiffs might have done better had they alleged violation of individual rights rather than group rights; had they proffered credible alternative plans; and if they had a sound, workable and equitable remedy to offer. This speculation aside, *Bandemer* is mainly significant because it reflected the fact that a majority of this Court felt uneasy about political gerrymandering but knew of no remedy that would not lead it into a morass.

The foregoing cases established an electoral neutrality principle that applies to advocates of referenda issues, corporations, military personnel, minor political parties, independent political candidates and their supporters, racial minorities, and the major parties.

Consider also *Bullock v. Carter*, 405 U.S. 134 (1972), which invokes *personal* and *individual* rights to extend the electoral neutrality principle to individual candidates for elective office. The plaintiffs were three candidates for local office in the Texas Democratic primary who challenged a Texas statute which in their cases required payment of filing fees of $1424.60, $6300 and $1000, respectively. The three-judge lower court concluded these fees fell with unequal weight upon candidates and voters according to their ability to pay the fees and, therefore, needed to be "closely scrutinized." Such scrutiny led the panel to rule that the statute violated Equal Protection. This Court upheld that ruling 7-0, extending the neutrality principle to say that, even where a state does not absolutely guarantee a certain result, it cannot arrange the process to favor wealthy candidates over less-affluent ones.

Amicus concludes from the foregoing cases that a governmental neutrality principle permeates our constitutional jurisprudence and does, indeed, apply to the electoral process. In fact, one cannot find a single case, when the issue was before this Court, where it did not come down on the side of governmental neutrality. State election laws are usually fair and even-handed, oftentimes meticulously so.[4] Yet we find a glaring and massive exception in the case of districting laws where partisan and personal favoritism and vindictiveness are allowed to run amok.

II. THE STATE LEGISLATURE'S DISTRICTING PLAN USURPS THE EXCLUSIVE RIGHT OF THE PEOPLE OF PENNSYLVANIA TO CHOOSE THEIR REPRESENTATIVES TO CONGRESS AND THUS VIOLATES ARTICLE I, SECTION 2 OF THE CONSTITUTION

A. The Federal Convention of 1787

The first substantive business conducted by the federal convention was debate and voting on fifteen resolutions – collectively known as the "Virginia plan" – offered by delegate Edmund Randolph on Tuesday, May 29, 1787. The first clause of the fourth of these resolutions was

> "Resolved that the members of the first branch of the national legislature ought to be elected by the people of the several states every for the term of ;" (Farrand, p. 20)

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[4] *E.g.*, the case of requiring candidate names to be alphabetically rotated among precincts so that the candidate whose name comes first alphabetically will not have an advantage due to the propensity of some voters to blindly check the name at the top of the list.

Debate on this resolution took place on Thursday, May 31. Six delegates spoke during the debate: delegates Mason, Wilson, and Madison supporting the resolution; delegates Pinckney, Gerry (*sic*) and Sherman opposing it. Delegate Gerry spoke twice. A reading of the record of this debate – whether from the notes of Madison, Yates, King or Pierce – shows that the proposed alternative to having "the people" choose those members was to have the state legislatures do it. No other method was proposed. (Farrand, pp. 48-50)

No opponent of the resolution offered the argument that the state legislatures could act as the surrogates of the people because they were "the voice of the people." *Anne Arundel Co. v. State Admin. Bd.*, 781 F.Supp 394, 400 (D.Md. 1991). The issue was whether the people *or* the legislatures should have this prerogative. Gerry, in particular, did not want to entrust this responsibility to the people. He said

> "The people . . . are the dupes of pretended patriots. In Massachusetts it has been fully confirmed by experience that they are daily misled into the most baneful measures and opinions . . . " (Farrand, p. 48)

Gerry was unsuccessful in persuading a majority of his colleagues. When the vote was taken six state delegations supported the resolution; only two opposed it. Two delegations were divided. (Farrand, pp. 46, 50)

Debate then turned to the fifth resolution which proposed "that the members of the second branch of the National Legislature ought to be elected by the first . . . " This proposition failed on a 3-7 vote. From June 1 through 5 the convention gave first consideration to the remaining resolutions, at the conclusion of which it passed a motion by delegate Pinckney to reconsider – on the following day – its May 31 decision endorsing the fourth resolution. (Farrand, p. 118)

On that day (Wednesday, June 6) the convention again debated whether the members of the "first branch of the national legislature" should be elected by the people, or by the state legislatures. Pinckney moved, and Rutledge seconded, to strike the word "people" and insert in its place the word "legislatures." Again, the alternatives being debated could not be clearer. Speaking in favor of the substitution were delegates Pinckney, Gerry, and Sherman. Speaking in opposition were delegates Wilson, Mason, Madison, Dickenson, and Pierce. Much the same arguments were made as on May 31. Again a vote was taken, and again "the people" prevailed: eight delegations to three. "The people" was no idle cliche. In the context of that debate it meant *as opposed to the state legislatures.* (Farrand, pp. 130-147)

The following day (Friday, June 7) the convention again took up the question of electing the *second* branch by considering delegate Dickenson's motion that this branch "ought to be chosen by the individual legislatures." (p. 148) It passed unanimously. The "first branch of the National Legislature" became the U.S. House of Representatives. The "second branch" became the U.S. Senate. The proponents of both means of selection had achieved a chamber of their liking. It remained this way until passage of the Seventeenth Amendment in 1913 gave "the people" the prerogative of choosing members of the "second branch" as well.

B. The Federalist No. 52

In *Wesberry v. Sanders*, 376 U.S. 1 (1964) this Court defined "the people" as meaning that one person's vote in a congressional election should carry as much weight as any other's. When the Governor and 253 members of the Pennsylvania General Assembly are empowered to influence the selection of the state's congressional delegation by

means of discriminatory districting, their individual votes are weighted by a factor of many thousand times the votes of their twelve million fellow Pennsylvanians.

In *The Federalist* No. 52, James Madison discusses what should be the qualifications of persons elected to the House of Representatives, and what should be the qualifications of those who do the electing. At issue with respect to voter qualifications was whether (1) states should be permitted unlimited discretion in deciding who would be eligible to vote in congressional elections, (2) the federal constitution should tell the states who would be eligible, or (3) the federal constitution should permit the states *limited* discretion in deciding who would be eligible.

The Framers chose the third option by concluding the first sentence of Article I Section 2 with the words

> " . . . the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

In support of the Framers' decision that states should not be able to establish qualifications for voting in congressional elections any different from those regulating who chooses state representatives Madison wrote

> "To have submitted the [matter of qualifications of electors of the U.S. House of Representatives] to the legislative discretion of the states would have been improper for the additional reason that it would have rendered too dependent on the State governments that branch of the federal government which ought to be dependent on the people *alone*." (emphasis added)

In short, the Framers believed that election to the U.S. House of Representatives was a matter to be decided by "the people *alone*." If the Framers were unwilling to give state legislatures full discretion in setting qualifications for congressional electors, how much *more* strongly would they have opposed permitting states to pass congressional

districting laws designed to facilitate the election of certain candidates and the defeat of others.

The Framers could not have anticipated that by the device of discriminatory districting ("gerrymandering") state legislatures would find a means of exerting a significant – if not dominant – influence over the selection of U.S. representatives. Sometimes that discrimination is subtle, unacknowledged, and difficult to prove. In the case at bar, however, the discrimination is dramatic and blatant.

The Framers could only bequeath to us the *principle* that "the people alone" were to choose U.S. Representatives and leave it to those whose job it is to interpret our constitution to apply that principle in the light of unforeseen future circumstances. For "the people alone" to do this choosing there must, of course, be elections for this purpose. Not only elections, but elections conducted under impartial election laws – *including the election laws pertaining to the establishment of district boundaries.*

C. Implications of *U.S. Term Limits v. Thornton*

The constitutional imperative that "the people" be the sole and exclusive choosers of U.S. representatives was given significant reinforcement when this Court ruled in *U.S. Term Limits Inc. v. Thornton*, 514 U.S. 779 (1995). At issue was (1) whether states could impose qualifications for the offices of U.S. representative or U.S. senator in addition to those set forth by the Constitution and (2) whether a provision that does not actually prohibit an incumbent from seeking re-election, but merely keeps his name from being placed on the ballot is nevertheless unconstitutional.

In an extensive examination of the records of the federal convention and the ratification debates this Court

ruled against term limit proponents on both counts. It is now settled law that states cannot impose term limits on federal officials; and a state law that enables an incumbent to seek re-election only through write-in votes is likewise proscribed. The issue here is whether a state, by discriminatory congressional districting, is similarly imposing additional qualifications for U.S. representatives. And if it is, what is the "additional qualification"?

Amicus submits that an "additional qualification" is, indeed, being imposed. The qualification is that the congressional candidate meet with the ideological and/or personal approval of the State – or more precisely, the approval of those individuals who hold power in a particular state at a particular moment. Plaintiffs in the case at bar would probably assert that Democratic Representatives Robert A. Borski and Frank R. Mascara failed to meet the partisan and ideological qualifications erected by the State of Pennsylvania in 2001 when it crafted the congressional districting plan under litigation. Each found himself in a district of bizarre configuration, heavily Democratic in orientation, and containing the residence of another Democratic incumbent. Most of the population of their "new" districts came from the "old" district of the other Democrat incumbent they were "paired" with.

Borski decided retirement was a better choice than running against fellow Democrat incumbent Joseph M. Hoeffel in the 2002 Democratic primary. Mascara decided to go against fellow Democrat John P. Murtha in the 2002 Democratic primary and lost. A third Democrat incumbent, Representative Tim Holden, suspects that he, also, failed to meet the partisan and ideological qualifications imposed by the State of Pennsylvania for congressional candidates in 2002. He found himself in a heavily Republican district containing the residence of Republican incumbent George Gekas. He faced Gekas in the general election and, contrary to expectations, eked out a 51-49 victory.

Defendant/Appellees in the case at bar might argue that discriminatory districting is not "on all fours" with a term limits law because the former is not certain to succeed, whereas the latter is. Holden's experience appears to buttress this argument. But the answer was given by this Court in Part IV of its opinion in *U.S. Term Limits*, 514 U.S., at 830-831: the fact that a popular incumbent whose name has been kept off the ballot by a state term limits law might still manage to get re-elected by write-in votes does not render such law constitutional. This court held "that a state amendment is unconstitutional when it has the likely effect of handicapping a class of candidates and has the sole purpose of creating additional qualifications indirectly." 514 U.S., at 836. Similarly, the fact that a candidate who is a victim of discriminatory districting might win anyway does not render constitutional a districting plan that has an invidious purpose and "has the likely effect of handicapping a class of candidates."

Whatever may be the differences between a congressional term-limits law and a discriminatory congressional districting law, both have the intent and effect of diluting the power of "the people alone" to choose their U.S. representatives and for that reason are unconstitutional.

D. Judge Niemeyer's Discovery

Amicus is not the only observer to notice how state governments have, by discriminatory districting, pre-empted a major role in the selection of U.S. representatives. One federal appeals judge, in the course of adjudicating a *Karcher* claim in the 1991 congressional redistricting of Maryland, made the same discovery.

In *Anne Arundel County Republican Central Committee v. State Administrative Board of Election Laws*, 781 F.Supp. 394 (D.Md. 1991) plaintiffs alleged two constitutional violations: (1) a *Karcher* claim of failure to make a

good faith effort to achieve precise population equality among the eight new districts and (2) an Article I Section 2 claim that by fragmenting Anne Arundel County among four districts the plan "deprived the plaintiffs of an opportunity to effectively participate in the political process."

The state's plan achieved a population spread of 10 persons, but the legislature also had before it a plan with a spread of 9 persons. The Panel majority held that the state must justify its choice of the plan having the greater spread; and when such justification was proffered accepted it and upheld the plan. The dissenting judge (Paul V. Niemeyer) held that the state did *not* have to justify its greater deviation. Therefore, all three judges held for defendants on the *Karcher* claim.

The Panel split over the Article I, Section 2 claim with the majority ruling that Article I, Section 2 does not prohibit a state from taking "political" factors into account in crafting a districting plan. They stated that relief from political discrimination was available under the First and Fourteenth Amendments. Judge Niemeyer, on the other hand, argued that the legislature "drew . . . district lines to depict the classic gerrymander in an attempt to control the outcome of future congressional elections" and in so doing "the people are not represented directly and equally, as required by Art. I, Sec. 2." 781 F. Supp. 394, 401.

In his lengthy dissent, which skirts the argument made above, Niemeyer notes the same debate at the federal convention as does amicus, with its decision that the people, as opposed to state legislatures, were to elect the members of the U.S. House of Representatives. At one point he states

> " . . . it must be concluded that the right of the people to elect directly their representatives . . . means nothing if the Constitution does not forbid the states from manipulating the boundaries of congressional districts in attempts to influence the outcome of the people's congressional elections." 781 F. Supp. 394, 408.

But Niemeyer's argument faltered at the point of prescribing a remedy that would secure this "right" of the people – without leading the courts into a morass. He states "we are left with criteria for creating districts in a manner that is 'neutral;' " then goes on to cite "geological structures and long-standing boundaries, including state, municipal, and county subdivision boundaries," and finally "compactness and contiguity." He did not say how such "neutral" criteria can be organized in a manner that would afford a clear-cut demarcation between what the courts must accept and what they must reject.

The majority, sensing that Judge Niemeyer's prescription could lead their Panel into a quagmire, noted

> "What constitutes political gerrymandering going so far beyond the pale as to be unacceptable . . . is hard to define . . . We can well afford . . . leaving to another day . . . and another case the task of establishing federal constitutional limits to gerrymandering in congressional districting." 781 F. Supp. 394, 400 (n. 11)

The majority also noted that

> " . . . the 'neutral criteria' districting called for by the dissent would in no way ensure maintenance of the territorial integrity of Anne Arundel County, which is what brought on this suit in the first place." 781 F. Supp. 394, 398.

They observed that four other counties had been fragmented by the plan and "doubted" that "the territorial of Anne Arundel County is a classification." *Id.*, 400. Their conclusion was that "a federal court should think long and hard about rejecting the reasons – the justification – of the state legislature." *Id.*, 400.

Indeed it should.

But the Panel majority could not deny the Framers' mandate that U.S. representatives ought to be chosen by "the people." Niemeyer, on the other hand, could not persuade the majority that there was any means by which "the people" could exercise their prerogative without imposing upon the courts "a sort of judicial receivership" that would obligate them to "ultimately conduct redistricting." *Id.*, 399 The majority attempted to escape this dilemma by erecting a straw man:

> " . . . the 'people' of the State of Maryland cannot in 1991, even if they could have done so in 1789, practically be heard individually *via* a statewide town meeting of the whole. The most direct channel of action by 'the people' is *via* their elected representatives in both houses of Maryland's legislature . . . " *Id.*, 400.

The alternative to state-sponsored election rigging is neither "a statewide town meeting" nor "a sort of judicial receivership."

III. THE AVAILABILITY OF NEW AND IMPARTIAL DISTRICTING PROCEDURES NULLIFIES THE ASSUMPTION THAT "POLITICAL CONSIDERATIONS ARE INSEPARABLE FROM DISTRICTING," AND MAKES IT PERFECTLY PRACTICABLE FOR STATES TO RESPECT THE ELECTORAL NEUTRALITY PRINCIPLE AND ALLOW "THE PEOPLE" TO CHOOSE THEIR REPRESENTATIVES TO CONGRESS

For most of the past two centuries it was assumed that discretion was a necessary and inescapable component of political districting, an assumption articulated by Justice

White's statements to that effect in *Gaffney*.[5] If that were so, then there would be no practical alternative to permitting states to engage in discriminatory districting and the courts would be justifiably prudent in staying out of the "political thicket" by letting states district as they see fit.

But the advent of impartial districting procedures has changed all that. The means are now at hand to implement both the electoral neutrality principle in the realm of political districting and the people's constitutional right to be the exclusive choosers of U.S. representatives. However, before discussing such procedures, it is prudent to consider four major objections to the justiciability of political gerrymandering cases.

A. Objections to the Justiciability of Partisan Gerrymandering

Those objections, many of which can be found in Justice O'Connor's opinion in *Davis v. Bandemer*, rest in large measure upon the perception that gerrymander claims involve claims of *group* rights, as opposed to *individual* rights. As Justice O'Connor observed

> "The right asserted in *Baker v. Carr* was an individual right to a vote whose weight was not arbitrarily subjected to 'debasement' . . . The rights asserted in this case are *group* rights to an equal share of political power and representation . . . *Reynolds* [*v. Sims*] makes plain that the one

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[5] The following passages have been quoted *ad nauseam* by proponents of discretionary districting:

"Politics and political considerations are inseparable from districting and apportionment." (412 U.S., at 753)

" . . . we have not . . . attempted the impossible task of extirpating politics from what are the essentially political processes of the sovereign states." (412 U.S., at 754)

> person, one vote principle safeguards the individual's right to vote, not the interests of political groups. 478 U.S. at 149.

The assertion of a "group right to . . . representation" does open up a can of worms. It raises the issue of how to delineate the group when it is based on ideology or interest rather than race, sex, or sexual orientation Any delineation of an ideological group is bound to be arbitrary.

The second objection facing a partisan gerrymander claim is closely related to the first. Assuming the group is defined with sufficient precision, then we must have a way to *measure* the degree of harm inflicted on that group. *Bandemer* triggered an explosion of interest in the academic community concerning methods of measuring partisan gerrymandering. It can be said (arguably) that five *pro*spective[6] tests for partisan gerrymandering are now extant.[7] *Amicus* has spent over a decade attempting to apply these tests to actual districting plans in Ohio and Indiana and can flatly state that all these tests are arbitrary in one way or another. Sometimes they yield contradictory conclusions.

The third objection is closely linked to the second. Assuming that consensus can be reached on how to measure the severity of the gerrymander, the next question is where along that continuum of harm is the threshold point at which the courts should intervene. What is the "bright line" separating a permissible degree of partisan bias from

[6] A *pro*spective test for gerrymandering is one that can be applied before any election has taken place under the plan. This is in contrast to a *retro*spective test which can be applied only after at least one election has occurred under the plan.

[7] See Grofman, 1985; Grofman, 1990 Chapters 6, 7, and 8; and Gelman and King, 1994.

an *im*permissible degree of partisan bias in a districting plan?

Justice O'Connor clearly perceived this third obstacle as she contemplated the standard by which the *Bandemer* plurality proposed to decide whether a plan is an unconstitutional partisan gerrymander: "when the electoral system is arranged in a manner that will consistently degrade . . . a group of voters' influence on the political process as a whole." *Id.*, 132. In her view that "standard will over time either prove unmanageable and arbitrary or else evolve towards some loose form of proportionality." *Id.*, 155. She devotes the final five pages of her concurrence to an exploration of the problems engendered by this nebulous standard. Examining the criteria *Baker v. Carr* used to define a non-justiciable "political question," she concludes a partisan gerrymandering claim presents a political question where there is "a lack of judicially discoverable and manageable standards for resolving it." *Id.*, 148.

The fourth objection concerns the remedy. In this regard it is useful to consider what might have happened in the "remedy phase" of litigation had plaintiffs prevailed in either of the two major partisan gerrymandering cases which preceded the case at bar: *Bandemer* and *Badham*. Appendix A contains the prayer from the *Bandemer* Plaintiffs' complaint. It simply asked the Panel to declare the plan "null and void," and to prohibit the state from holding elections under it. It tossed the entire remedy burden into the lap of the courts.

Appendix B contains the *Badham* plaintiffs' prayer. They are more specific: the Panel should "enunciate standards and guidelines" which the legislature would be compelled to follow in crafting a new plan. If the legislature failed to pass a new plan "in a timely manner," or if it failed to adhere to the Panel's guidelines, then the Panel

would "promulgate" its own plan. The details of the "standards and guidelines" are left to the Panel to decide.

It is easy to see how either of these remedies could lead to "a sort of judicial receivership."

B. Elements of a Remedy to Satisfy an Electoral Neutrality Principle or to Assure "The People's" Right to Choose Their U.S. Representatives

If a gerrymandering claim is litigated on the basis of an alleged violation of *individual* rights, the first three of the objections cited above disappear. It is no longer necessary to delineate a "cognizable political group." It is not necessary to measure to what extent the group's "influence on the political process as a whole" has been "degraded." It is not necessary to set a threshold of "degradation" that cannot be exceeded.

If the alleged harm is not a denial of "an equal share of political power and representation," but simply that the state has failed in its duty to "govern impartially," it becomes possible for a potential plaintiff like former congressman Frank Mascara merely to show that he has been *individually* harmed. And if the alleged harm is that the State has encroached upon "the people's" right to be the sole and exclusive chooser of its U.S. representatives, any individual *U.S.* citizen residing in the State of Pennsylvania has standing to sue.

The state's defense against the former allegation would be to demonstrate that Mascara's misfortune was the unintended consequence of an impartial districting procedure that was the embodiment of a "consistently applied" policy utilizing "nondiscriminatory" criteria. *Karcher v. Daggett*, 462 U.S. 725, 740. The state's defense against the latter allegation would be to demonstrate that its congressional districting procedure, codified into state

law, denies it the power to exert influence over who the state's congresspersons are to be.

If a governmental neutrality principle applicable to the electoral process is judicially recognized, then it is not necessary to have as a remedy a plan of geographical districts that will guarantee to every "cognizable" political group proportional representation.[8] It is only necessary that the map be arrived at in an impartial manner. And if there is judicial recognition of "the people's" right to be the sole and exclusive chooser of its U.S. representatives, then it is only necessary that the map be one in which the state government has been precluded opportunity to influence which candidates get "good" districts and which candidates get "bad" districts.

C. Alternative Ways to Achieve Impartial Districting

We then reach the question of what available options would satisfy the foregoing criteria within the framework of the nation's traditional norm of geographical districts. If this Court were to hold for Plaintiffs and order Pennsylvania to redistrict in an impartial manner, Appendix C depicts the options available to the state with which *amicus* is familiar. Logically, there are only two ways to draw districts in an "impartial manner": either by (A) an impartial person or agency having discretion or (B) by an impartial procedure which precludes discretion. It is not for the judiciary to say which alternative it must be, although it is obvious that who is an impartial person, or

---

[8] Proportional representation is probably impossible to attain under *any* electoral system based on geographical districts, regardless of how drawn. This requirement could only be met by a system of proportional representation by single transferable vote. (PR/STV)

what is an impartial agency, may depend on who is answering the question. Certainly it would not suffice that the person or agency need only be acceptable to the leaders of the two major parties. He, she, or it would have to carry the trust and confidence of *every* person or group having a stake in the political process. For that reason, Alternative "A" is probably unrealistic.

Whether Pennsylvania chooses "A" or "B," federal law currently dictates that its districts be single-member. If Pennsylvania opts for an impartial procedure, it does not have to adopt any of the four such procedures identified in Appendix C as currently extant: S. 6166, HJR 4, Balanced Neutral, or A.C.T.I.O.N. It might craft its own procedure. Finally, within its single-member congressional districts, the state has the option to continue with plurality voting or to institute "majority preferential," "alternative," or "Instant Runoff Voting," methods of modified proportional representation that essentially allow voters to "district" themselves according to political belief. This Court has said

> "From the beginning, we have recognized that 'reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites . . . '" *White v. Weiser*, 412 U.S. 783, 794.

and the Court has recognized

> " . . . the legislature's 'primary responsibility' in the area of apportionment . . . " *Id.*, 799 (Marshall, J. concurring).

These passages have been cited by proponents of discretionary districting to authorize and justify discriminatory districting. They can just as well be read to affirm that state legislatures have the right and the responsibility to choose among the options posed in Appendix C, and to

craft districting *procedures* according to their desires and needs, subject only to the "constitutional requisite" of official impartiality.

Appendix D contains the textual portions of the "Ohio Anti-Gerrymander Amendment" that apply to congressional districting in order to afford this Court a glimpse of the technical detail necessary to ensure that there are no crippling ambiguities and that there are detailed decision rules which cover all contingencies and resolve all possible conflicts between provisions. This document has been "fine-tuned" over a period of 25 years. It has been tested to find out what its political consequences are likely to be.[9] A careful reading of it ought to convince a reasonable person that it is, indeed, possible to completely remove discretion from districting. All it takes is the will to do it.

Appendix E demonstrates – dramatically – how that will has been lacking. Despite the impressive bipartisan backing it has received in its quarter-century before the Ohio General Assembly, the Ohio Anti-Gerrymander Amendment has never been brought to a floor vote. The reason is quite understandable. For a legislature to voluntarily adopt such a measure would be for it to acquiesce in a loss of some of its power and in a dispersion of that power among millions of ordinary voters.

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[9] See Horn, *et al.*, 1989

CONCLUSION

On the wall of the Ohio State University College of Law building are these eight words of the British statesman Edmund Burke:

> Law and Arbitrary Power
> Are in Eternal Enmity

Plaintiffs, as many similarly situated plaintiffs before them, are in a struggle with the possessors of arbitrary power. *Amicus* urges this honorable Court to end that power by extending the rule of law in the realm of political districting to vindicate the rights of *all* Americans.

Respectfully submitted,

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APPENDIX A

Prayer of Original and
Amended Complaints: *Bandemer v. Davis*

WHEREFORE, plaintiffs request the Court to enter judgment declaring the House and Senate Reapportionment Laws unconstitutional as violative of the Fourteenth Amendment to the United States Constitution and Article II, Section 1, Article I, Section 23 and Article IV, Section 6 of the Constitution of the State of Indiana and that the House and Senate Reapportionment Laws are therefore null and void, enjoining the defendants from administering and enforcing the House and Senate Reapportionment Laws, and for plaintiffs' attorneys' fees and costs incurred in this action and all other relief as may be appropriate.

APPENDIX B

Prayer of Original and Amended Complaints:
Badham v. Eu (remedy-relevant portions)

WHEREFORE, plaintiffs respectfully pray:

* * *

(2) That the Court declare A.B. 2X is now and prospectively in violation of the Constitution of the United States and of the Constitution of the State of California, and is now and prospectively null and void and of no further force and effect insofar as it establishes congressional districts for the State of California.

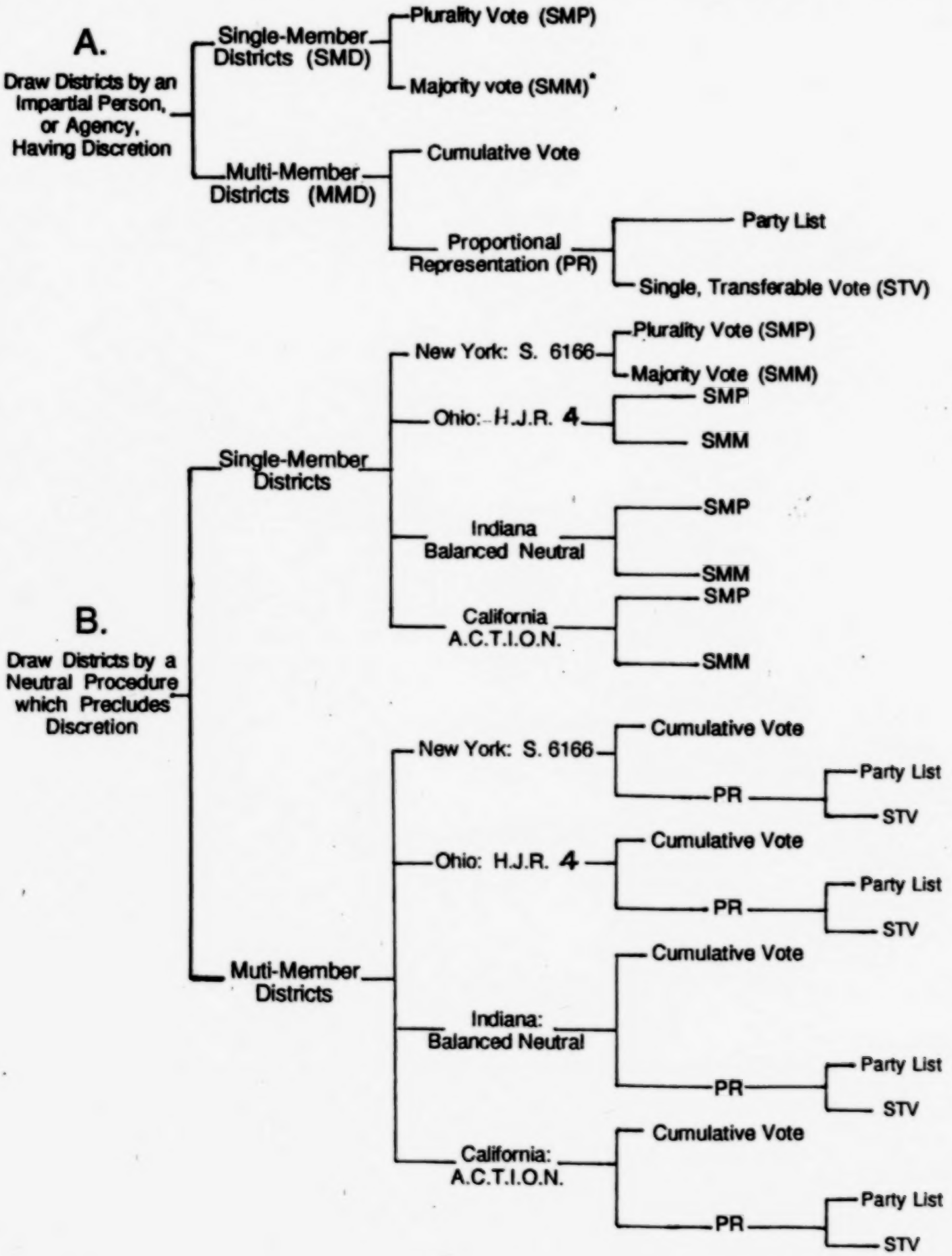
(3) That the Court permanently restrain and enjoin the Defendant from ordering or conducting any electoral processes under A.B. 2X, from ordering or conducting the primary election scheduled to be held June 5, 1984, or the general election scheduled to be held November 6, 1984, from certifying the results of either election, and from taking any other steps including the expenditure of any public funds, with respect to the election of Members of the United States House of Representatives, until there has been a further redistricting of congressional districts in accordance with constitutional requirements as approved and promulgated by the Court.

(4) That the Court promulgate a plan to redistrict the congressional districts of the State of California in such manner as to meet federal and state constitutional requirements if the California Legislature fails to adopt, in a timely manner, a congressional redistricting statute pursuant to constitutional standards and guidelines enunciated by the Court.

* * *

APPENDIX C

ALTERNATIVE WAYS OF IMPLEMENTING A CONSTITUTIONALLY-MANDATED NEUTRALITY PRINCIPLE IN POLITICAL DISTRICTING



* A majority vote within a single-member district can be obtained by employing a Majority Preferential voting system. This is also called the Alternative Vote.

APPENDIX D: PROVISIONS OF OHIO ANTI-GERRYMANDER AMENDMENT APPLICABLE TO CONGRESSIONAL DISTRICTING

Section 1. In each year ending in one and only at that time, this state shall be divided into as many congressional districts as there are seats in the United States house of representatives apportioned to the state.

Section 2. The whole population of the state, as determined by the most recent federal census, shall be divided by the number of United States representatives apportioned to the state pursuant to that census, and the quotient shall be the ratio of representation in the congress for the next ten years.

Section 3. The population of each congressional district shall be as nearly equal as practicable to the congressional ratio of representation, as provided in Section 2 of this Article, and no such district shall contain a population of less than ninety-nine percent or more than one hundred one percent of that ratio.

Section 5. District boundaries established pursuant to this Article shall not be changed until the ensuing federal decennial census and the ensuing apportionment except as provided in Section 12 of this Article, notwithstanding the fact that boundaries of political subdivisions or city wards within a district may be changed during that time.

Section 6. (A) As used in this Article:

(1) "Perimeter segment" means a portion of the perimeter of this state or of a township, municipal corporation, census tract, or block numbering area, or unit thereof as established in division (D) of this section, that

coincides with the perimeter of another state or of another township, municipal corporation, census tract, or block numbering area, or unit thereof.

(2) "Census tract," "block numbering area," and "census block group" mean the geographical units designated by these terms in the most recent federal census and include any comparable geographical units called by other names in a federal census after the effective date of this amendment.

(3) "County fragment" means one of the portions of a county resulting when a county is divided between two or more congressional districts. The number of fragments shall equal the number of different districts with territory within the county.

(4) "Municipal fragment" means one of the portions of a municipal corporation resulting when a municipal corporation is divided between two or more congressional districts. The number of fragments shall equal the number of different districts with territory within the municipal corporation.

(5) To determine the "compactness ratio" of districts for purposes of this Article, each person submitting a plan shall:

(a) compute the area of each district in his plan;

(b) compute the perimeter of each district in his plan;

(c) compute the compactness ratio of each district in his plan by dividing the area of each district by the square of its perimeter;

(B) On the first day of May in each year ending in one, the secretary of state shall, by public notice, invite any person to submit a plan for dividing the entire state into congressional districts. Any person intending to submit a plan shall file a notice of intent with the secretary of state by the fifteenth day of May, along with a fee in an amount to be fixed by law not to exceed one hundred dollars for each plan.

(C) On the first day of June of the same year, the secretary of state shall publish and distribute to any person who filed a notice of intent to submit a plan, paper documents indicating the population, length of perimeter segments, and area of each county, township, municipal corporation, census tract, and block numbering area in the state whose population does not exceed a threshold equal to one percent of the ratio of representation in congress.

(D) The secretary of state shall divide any township, census tract, or block numbering area whose population exceeds the threshold defined in this section, or which contains parts of more than one municipal corporation, into the fewest possible units of contiguous territory containing populations not exceeding the threshold or containing parts of more than one municipal corporation. When it is possible to perform such divisions in more than one way the secretary of state shall make that division resulting in the most compact units, as defined in Section 9(D) of this Article. The secretary of state shall include in the documents published under this division the population, length of perimeter segments, and area for each such unit.

(E) Information published by the secretary of state pursuant to this division, including census data and

measurements made using established cartographic techniques, shall be presumed to be accurate.

Section 7. Each plan submitted pursuant to an invitation issued under Section 6 of this Article shall cover the entire state and shall be submitted in the manner prescribed by the secretary of state. The secretary of state shall require that each plan include a summary sheet listing the population and compactness ratio of each district in each plan, the identity of each county divided by the plan, the number of county fragments resulting from the plan, the identity of each municipal corporation divided by the plan, and the number of municipal fragments resulting from the plan. The summary sheet shall include a statement, signed by the person submitting the plan, attesting that the criteria in Section 8 of this Article have been met. All plans shall be filed with the secretary of state not later than the first day of July in each year ending in one, and subsequent to that date shall be available for public examination.

Section 8. The secretary of state shall examine the summary sheet of each plan submitted under Section 7 of this Article and determine whether the plan described in the summary sheet apparently conforms to the following criteria:

(A) The plan shall meet the appropriate district population requirements of Section 3 of this Article.

(B) Each township, municipal corporation, census tract, or block numbering area, or unit thereof, as published by the secretary of state under Section 6 of this Article, shall retain its integrity and shall not be divided between two or more districts.

(C) Each district created by the plan shall be composed of contiguous territory and be bounded by a single, non intersecting, continuous line.

(D) No district created by the plan shall have a compactness ratio of less than thirty-thousandths as calculated according to division (A)(5) of Section 6 of this Article, except in the case of districts wholly or partially included in counties having at least one congressional ratio of representation, where the minimum compactness ratio shall be twenty-four thousandths.

Section 9. (A) The secretary of state shall choose, from among the plans qualifying under Section 8 of this Article, one plan for congressional districts, in accordance with this section.

(B) The secretary of state shall determine for each qualifying plan, on the basis of the information provided on its summary sheet, the total number of county fragments contained in it and the total number of municipal fragments contained in it. The secretary of state shall designate the plan that has the fewest county fragments the apparent winner. He shall then make a detailed examination of the supporting documents of the apparent winner to determine whether the information provided on its summary sheet is true and correct. If it is, the secretary of state shall, not later than the fifteenth day of August in each year ending in one, declare that plan the winner and that plan shall be the plan in effect for the next ten years. He shall publish for public distribution the map and list of units comprising the districts in the plan chosen.

(C) If examination of the supporting documents of the apparent winner fails to verify the information provided on its summary sheet, that plan shall be

disqualified. The secretary of state shall then determine the apparent winner from the remaining plans and follow the same verification procedure used in division (B) of this section. If the data provided on the summary sheet of the second apparent winner cannot be verified, the verification procedure shall be repeated until the plan that best meets the criteria of this section is found.

(D) If two or more qualifying plans each contain the fewest county fragments, the secretary of state shall choose that plan that has the fewest municipal fragments, not counting those derived from municipal corporations that are included in more than one county. If two or more qualifying plans each contain the fewest municipal fragments, the secretary of state shall choose that plan whose least compact district has the highest compactness ratio.

(E)(1) If the least compact districts of two or more qualifying plans have the same compactness ratio when rounded to two significant figures, the secretary of state shall compare the compactness of the next least compact districts of those plans, and the plan whose district has the highest compactness ratio, when rounded to two significant figures, shall be chosen. If no plan can be chosen after comparing the next least compact districts, the secretary of state shall compare the third least compact districts, and so on, until one plan emerges as the preferred one.

When rounding the compactness ratio of a district to two significant figures, the second significant figure shall be rounded to the next higher numeral if the third significant figure is "five" and all subsequent figures are zeros, and if the second significant figure is an odd number. The second significant figure shall remain the same if the third

significant figure is "five" and all subsequent figures are zeros, and if the second significant figure is an even number.

(2) If two or more qualifying plans have the same compactness ratio for all of their districts when rounded to two significant figures, the secretary of state shall compare the compactness of the least compact districts of each of those qualifying plans when the compactness ratio is rounded to three significant figures. If no qualifying plan can be chosen after comparing those least compact districts, the secretary of state shall compare the next least compact district, and so on, until one qualifying plan emerges as the winning plan.

(F) The secretary of state shall not disqualify any plan because the plan or summary sheet contains minor technical errors that have no substantive effect.

Section 10 (C) The general assembly shall, by law, prescribe a procedure for numbering congressional districts that precludes the exercise of discretion in the assigning of numbers, and the districts of the chosen congressional districting plan shall be numbered accordingly.

(D) The general assembly may, by law, adjust:

(1) The dates specified in Sections 6 and 7, and division (B) of Section 9 of this Article to reflect the availability of census data, the time the secretary of state requires to process plans, the filing dates for primary elections, and other factors.;

(2) The filing fees provided for in division (B) of Section 6 of this Article to account for inflation.

Section 13. The boundaries of congressional districts from which members were elected to the one hundred seventh congress shall remain in effect until January 1, 2003 and the members of congress elected in the general election in 2000 shall hold office for the terms for which then elected.

Section 14. The various provisions of this article are intended to be severable, and the invalidity of one or more of such provisions shall not affect the validity of the remaining provisions.

APPENDIX E

LEGISLATIVE HISTORY OF OHIO ANTI-GERRYMANDER AMENDMENT

General Assembly	Date Introduced	Designation	Sponsors (underlined); Co-sponsors Democrats:	Republicans:	Disposition
112th	Sept. 15, 1978	H.J.R. 90	Dale Locker, Virginia Aveni, Gene Branstool, Sherrod Brown, Ronald James, Mike Stinziano, Dennis Wojtanowski	Claire Ball	Never referred to a standing committee
113th	Feb. 15, 1979	H.J.R. 15	Dale Locker, Paul Leonard, Robert Boggs, Gene Branstool, Sherrod Brown, John Begala, Ed Hughes, Ronald James, Dennis Wojtanowski	Claire Ball, John Galbraith	Never referred to a standing committee
	May 17,1979	S.J.R. 12		Sam Speck	Died in reference committee
114th	Jan. 21, 1981	H.J.R. 8	Dale Locker, Robert Boggs	Claire Ball	Never referred to a standing committee
	Jan. 30, 1981	S.J.R. 5		Sam Speck, Paul Matia	Three hearings by Senate Committee on Elections but no committee vote
115th	May 24, 1984	H.J.R. 35		Joan Lawrence, Ron Amstutz, Louis Blessing, Robert Brown, Jim Buchy, Joan Davidson, John Galbraith, Thomas Pottenger, Ben Rose, Marie Tansey	Never referred to a standing committee
	May 24, 1984	H.J.R. 36		John Galbraith, Louis Blessing, Jim Buchy, William Donham, Joan Lawrence, Thomas Pottenger	Never referred to a standing committee
116th	Nov. 12, 1985	H.J.R. 33		Joan Lawrence, Ron Amstutz, Louis Blessing, Jim Buchy, Joan Davidson, John Galbraith, Thomas Pottenger, Ben Rose, Marie Tansey	Never referred to a standing committee
	Nov. 12, 1985	S.J.R. 30	Gene Branstool	Robert Ney, Robert Cupp, Charles Horn, Donald Lukens, H. Cooper Snyder	Following hearings and markup, was recommended for passage, 5-4, by Cmte. on State Govt. on May 23, 1986; but never reached floor of Senate
117th	Feb. 17, 1987	H.J.R. 7		Joan Lawrence, Ron Amstutz, Gene Byers, Joan Davidson, Tom Johnson, E.J. Thomas, Dale VanVyven, Lynn Wachtmann	Never referred to a standing committee
118th	March 30, 1989	H.J.R. 7		Joan Lawrence, Ron Amstutz, William Batchelder, Louis Blessing, Gene Byers, Joan Davidson, David Johnson, Tom Johnson, Thomas Pottenger, E.J.Thomas, Dale Van Vyven, Lynn Wachtmann	Never referred to a standing committee

119th	March 19, 1991	H.J.R. 4	Jerry Krupinski, June Lucas	Joan Lawrence, Ron Amstutz, William Batchelder, Richard Rench	Never referred to a standing committee
120th	March 10, 1993	H.J. R. 2	Karen Doty, Jerry Krupinski, Daniel Troy	Joan Lawrence, Ron Amstutz, William Batchelder, Gene Krebs	Referred to Committee on State Government One hearing
121st	April 19, 1995	H.J.R. 16	Karen Doty, Daniel Troy	Joan Lawrence, Gene Krebs, John Garcia, J. Donald Mottley, George Terwilleger	Referred to Committee on State Government No Action
122nd	March 19, 1998	H.J.R. 25	John Bender, Ed Jerse, Peter Jones, Jerry Krupinski, June Lucas, Johnnie Maier, Darrell Opfer, Frank Sawyer, Vernon Sykes, Randy Weston	Joan Lawrence, Ron Amstutz, William Batchelder, Jim Buchy, John Carey, John Garcia, Richard Hodges, Gene Krebs, Priscila Mead, J. Donald Mottley, Robert Netzley, Dale VanVyven, Lynn Wachtmann	Referred to Committee on State Government; two hearings; chairman offered to take a committee vote, but sponsor declined
123rd	January 12, 2000	H.J.R. 13	Vernon Sykes	Ron Amstutz	Referred to Committee on Technology & Elections; six hearings; no mark-up & vote
124th	June 19, 2002	H.J.R. 4	Barbara Sykes , Dixie Allen, Kenneth Carano, Wayne Coates, George Distel, Teresa Fedor, Annie Key, Eileen Krupinski, Dale Miller, Chris Redfern, Ron Rhine, Fred Strahorn		Referred to Committee on State Governmet; Sponsor hearing offered

Supreme Court, U.S.
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No. 02-1580

In The

Supreme Court of the United States

RICHARD VIETH, NORMA JEAN VIETH and SUSAN FUREY,

Appellants,

v.

ROBERT C. JUBELIRER, President of the Pennsylvania Senate, et al.,

Appellees.

On Appeal To The United States District Court For The Middle District Of Pennsylvania

BRIEF AMICUS CURIAE OF PENNSYLVANIA VOTERS JOANN ERFER AND JEFFREY B. ALBERT IN SUPPORT OF APPELLANTS

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INTEREST OF THE AMICI CURIAE[1]

JoAnn Erfer and Jeffrey B. Albert are Democratic voters in Pennsylvania who believe their voting rights have been infringed by the partisan gerrymandering alleged in this case. Ms. Erfer is a voter in the Sixth Congressional District and Mr. Albert a voter in the Eighth Congressional District, both of which have had their boundaries oddly misshaped in a way that ignored municipal and county lines to maximize the number of safe seats for Republican legislators statewide. They were previously petitioners in the state court case challenging this same redistricting. *Erfer v. Commonwealth*, 794 A.2d 325 (Pa. 2002). They have a strong interest in having this redistricting overturned to halt discrimination against their political group.

INTRODUCTION AND SUMMARY OF ARGUMENT

Factual and legal developments since *Davis v. Bandemer* have only increased the importance of restraining partisan gerrymandering designed to give one party a majority of seats even when it loses a majority of the votes.

First, technological changes have made partisan gerrymandering increasingly easy and precise. While historically parties could surely predict whether a given

[1] All the parties have provided written consent to the filing of this amicus brief. This brief has been prepared entirely by counsel for amici with the extraordinarily helpful assistance of Harvard Law Student David Schleicher, and no counsel for a party has authored this brief in whole or in part. This brief is being prepared on a pro bono basis by counsel and his assistant, and with the exception of printing and service costs reimbursed by Harvard Law School, no person or entity other than counsel has made a monetary contribution to the preparation or submission of this brief. The views expressed in this brief are in no way intended to represent the position of Harvard Law School.

set of district lines would benefit them or not, at least there was some roughness to the process of selecting those lines that made the partisan advantage smaller. But modern software now allows any party in control to click to get the computer to draw whichever district lines will *maximize* its partisan advantage, and to do so not just on a ward by ward or precinct by precinct basis but block by block (and, perhaps in the future, house by house). As a result, the partisan advantages have only grown larger – and more tempting to seize – thus increasing the degree and frequency of discrimination against voters who belong to parties who are temporarily out of power.

Second, political developments have also increased the ability to reap partisan advantages from gerrymandering. The electorate has become both more evenly divided between the two major parties and more predictable in voting for the same party across offices. This increases the gains from partisan gerrymandering and decreases the risk. Further, in part because the above factors have increased the temptation, the prior norm that limited such partisan gerrymandering to once every ten years has broken down, with state legislatures now often redistricting every election cycle to gain partisan advantage. *See* George Will, *Careless People in Power*, The Washington Post B-7, 2003 WL 56510154 (August 3, 2003) (objecting that this "shreds a settled practice that limits to once after each census the bruising business of seeking political advantage through redistricting."); David Halfbinger, *Across U.S., Redistricting as a Never-Ending Battle*, N.Y. Times. A1 (July 1, 2003). The breakdown of this norm not only means that the problem arises more often, but itself provides another reason why partisan gerrymandering has become more effective and less risky. When limited to once a decade, demographic changes over time could soften the partisan advantage provided by gerrymandering, and increase the risks of seeking too great an advantage. But now that parties feel free to gerrymander every two years, greater partisan advantages are possible with less risk

because district lines can be repeatedly fine-tuned to take into account any demographic changes from the last election.

These technological and factual developments make judicial enforcement of constitutional protections against gerrymandering more important than ever. These developments also ameliorate two serious objections to the justiciability of such claims that were raised by Justice O'Connor in her important separate opinion in *Davis*. One objection was that partisan gerrymandering was self-deterring because, in order to maximize the number of seats a party won, a controlling party had to lower the predicted margin of victory in those districts, thus increasing the risks of losing those seats. 478 U.S. at 152. But this point was far stronger in 1986 than today, for the above technological and political developments have greatly lowered any downside risk to partisan gerrymandering.

Another objection was that partisan gerrymandering involved political judgments best resolved or corrected by the political process. *Id.* at 145-52. But the enhanced precision of partisan gerrymandering removes any doubt that it can thwart correction by the political process by entrenching a party in power even when it loses a majority of the vote. Further, the increased partisan temptations and breakdown of the norm of decennial redistricting have left the major political parties with an insuperable prisoner's dilemma both across states and over time. Even if each party would be better off if there were no partisan gerrymandering, so that each party would have a fair crack at winning a majority in each state, their prisoner's dilemma will lead them to defect by engaging in partisan gerrymandering to gain local or temporary partisan advantage. One thus cannot take the decisions of each state party or legislature as reflecting their judgment of the general merits of partisan gerrymandering.

Third, there has also been an important legal development since 1986 – the decision in *Bush v. Gore*, 531 U.S. 98 (2000), which made clear that the Court is prepared to adjudicate and vigorously enforce the equal protection clause's prohibition on political discrimination. In *Bush v. Gore* that proposition was applied to prohibit the use of arbitrary and standardless discretion in vote counting that would permit a form of undetectable *sub rosa* discrimination on the basis of political viewpoint. *See* Einer Elhauge, *The Lessons of Florida 2000*, 110 POLICY REVIEW 15 (Dec 2001-Jan 2002). If the Court is prepared to enforce the equal protection clause against that sort of subtle political discrimination, then *a fortiori* it should be willing to do so against the more blatant type of political discrimination at issue here.

While the political vice is clear, courts have reasonably shared Justice O'Connor's remaining concern about whether administrable standards exist for identifying partisan gerrymandering. One important source of standards analogizes political competition by parties to economic competition by firms, and thus draws on antitrust principles for curbing anticompetitive behavior. *See, e.g.*, RICHARD POSNER, LAW, PRAGMATISM, AND DEMOCRACY 234-47 (2003); JOHN HART ELY, DEMOCRACY AND DISTRUST 102-03 (1980); Samuel Issacharoff, *Gerrymandering and Political Cartels*, 116 HARV. L. REV. 593 (2002); Persily & Cain, *The Legal Status of Political Parties*, 100 COLUM. L. REV. 775, 788-792 (2000); Richard H. Pildes, *The Theory of Political Competition*, 85 VA. L. REV. 1605 (1999); Issacharoff & Pildes, *Politics as Markets: Partisan Lockups of the Democratic Process*, 50 STAN. L. REV. 643 (1998). The most analogous body of antitrust law is the doctrine on monopolization. That doctrine requires the establishment of two elements: (1) a monopoly power to price substantially above the competitive level; and (2) exclusionary conduct that lacks any legitimate purpose and hampers rival competition. This suggests the following analogous

two elements to judge efforts to monopolize political markets.

> (1) *Political Monopoly Power* – One political party controls all the relevant state political branches and has a demonstrated ability to garner a number of seats above the competitive level – that is, above the reasonable range reflected in the percentage of seats that such a statewide vote percentage has historically or contemporaneously produced in comparable elections when district lines were not the product of partisan gerrymandering.
>
> (2) *Political Exclusionary Conduct* – The district lines cannot be explained by any legitimate purpose and have been drawn in such a way that the rival party predictably needs a higher statewide vote percentage than the controlling party to get a statewide majority of the seats.

These two elements provide concrete content to the discriminatory effects and intent tests adopted by a majority of the Justices in *Davis v. Bandemer*.

Applying those standards to the complaint in this case reveals that the lower court erred in dismissing the complaint. Indeed, it applied what amounted to a standard of per se legality. This Court should thus reverse and remand for application of the correct standards.

I. Judicial Enforcement of Constitutional Protections Against Partisan Gerrymandering Is More Important Than Ever

In *Davis v. Bandemer*, the Court held that partisan gerrymandering was a justiciable claim under the Equal Protection Clause. 478 U.S. 109, 113, 118-127 (1986). The Court made clear that voters that tended to support one political party were, like racial minorities, a cognizable group for the purposes of an Equal Protection analysis. *Id.* at 125 ("[T]hat the claim is submitted by a political group, rather

than a racial group, does not distinguish it in terms of justiciability.") The reason is that the Equal Protection clause ensures "that each political group in a State should have the same chance to elect representatives of its choice as any other political group." *Id.* at 124. Partisan gerrymandering denies the disfavored political group that equal chance and thus raises a justiciable claim.

Since the 1986 *Davis* decision, technological, political and legal developments have only increased the justification for enforcing equal protection norms against partisan gerrymandering. These changes have not only increased the harm caused by partisan gerrymandering but also militate against some reasonable concerns about judicial enforcement in this area. Moreover, experience since 1986 has made clear that, without some judicial enforcement of constitutional limits, bouts of "revenge" gerrymandering will continue and the democratic right of voters to replace their government will be weakened.

Technological Changes. As this Court has held, technological and social developments can change what the Constitution deems permissible electoral regulation. *See Anderson v. Celebrezze*, 460 U.S. 780, 796-97 (1983) (holding that, although they had a long and accepted history, early filing deadlines for independent candidates had become unconstitutional because changed technology and expanded literacy made spreading information about late-developing independent candidates more feasible). Here, increasingly sophisticated software and information of individual voting patterns has vastly increased the precision of partisan gerrymandering. In 1986, the *Davis* plurality noted that, with political voting records "'available precinct by precinct, ward by ward'" it would be relatively easy for any legislature to predict the political consequences of particular district lines. *Id.* at 128 (plurality) (quoting *Gaffney v. Cummings*, 412 U.S. 735, 752-53 (1973). Since then, the available precision has gotten much greater. "Beginning 10 years ago, sophisticated computer-software packages have allowed partisan mapmakers to

match new census data with their own files on neighborhoods' voting histories – down to the level of individual blocks. That lets them design districts with predictable partisan preferences." John Harwood, *No Contests: House Incumbents Tap Census, Software to Get a Lock on Seats: Latest Redistricting Succeeds In Entrenching Status Quo; More Gridlock Guaranteed*, Wall St. J., at A1 (June 19, 2002).

This new sophisticated software and voter information makes it possible to draw district lines less crudely and with less guesswork. One need only click to get the district lines that maximize a party's partisan advantage given a specified safe seat buffer constraint. Parties who engage in partisan gerrymandering can thus secure greater partisan advantages with less political risk than ever before.

Political Developments. Other important factual developments have been political. How voters vote for one office has offered an increasingly accurate prediction of how they will vote for other offices. This makes gerrymandering based on prior election results far more precise and accurate. Further, as the 2000 election showed, the electorate has become quite evenly divided between the two major parties, probably because both parties have increasingly sophisticated information about where median voter preferences lie. This equal division greatly increases the potential gain from partisan gerrymandering.

The above technological and political developments have increased the temptations of partisan gerrymandering and thus contributed to the breakdown of the customary norm about the frequency of redistricting. Traditionally, redistricting took place only once every ten years after the required census. Now, this custom has broken down, with controlling parties willing to engage in biennial redistricting when it advantages them. *See* George Will, *supra*; Halfbinger, *supra*. This does more than shatter a comfortable tradition – it allows a controlling party to

continually fine-tune district lines to offset demographic changes and keep itself in power.

The old system of redistricting every ten years allowed population shifts and gradual political change to overcome the effect of the original gerrymander. This made any effects of partisan gerrymandering less permanent. Further, controlling parties had to anticipate that future demographic shifts might make what looks like a comfortable safe seat margin in year 1 very unsafe five to ten years later. To avoid this problem, they thus had to build in a greater buffer of safety into their gerrymanders, which reduced the extent of the partisan advantage they could reap. Thus, limited to once every ten years, partisan gerrymandering was both less permanent and less extreme.

In contrast, now that legislatures feel free to redistrict every two years, partisan gerrymandering can be both more permanent and extreme. The majority party can continually tinker with district lines in response to gradual changes in population and voting patterns and thereby maintain its undemocratic lock on power. Further, because it now knows it will be able to fine-tune its district lines in future years, the controlling party will not need to create as great a buffer to secure safe seats in any redistricting it does. Its very first redistricting after a census can claim an even more extreme partisan advantage without increasing the risk of losing seats in future years.

This is thus not a problem that arises only when legislatures in fact have redistricted twice since the last census. The mere prospect that the new norm makes biennial redistricting permissible in future years makes legislatures willing to engage in more extreme partisan gerrymandering from the start. This prospect of repeated redistricting also makes it even more likely that partisan gerrymandering "will consistently degrade a voter's or a group of voters' influence on the political process as a

whole" and thus constitute unconstitutional discrimination. *Davis,* 478 U.S. at 132, 142-43 (plurality).

The Implications for Various Prudential Concerns. The *Davis* plurality noted that "the mere fact that a particular apportionment scheme makes it more difficult for a particular group in a particular district to elect the representatives of its choice does not render that scheme constitutionally infirm." *Id.* at 131 (plurality). But the above technological and political developments allow redistricters to go well beyond making it more difficult for certain voters in a particular district to win races. Partisan gerrymandering can now be used to effectively guarantee a large and safe majority for the party that controls redistricting even when it receives only a minority of the vote. This severely limits rival competition, since other parties will now need a substantial supermajority to overcome such partisan gerrymandering. It also lessens the responsiveness of the controlling party and legislators to the voters, for they can now lose a majority of the voters without fearing a loss of political power.

The new level of precision generated by modern technological and political developments also ameliorates one of the serious concerns Justice O'Connor raised about adjudicating partisan gerrymandering claims. Justice O'Connor argued that one reason not to engage in such adjudication was that "political gerrymandering is a self-limiting enterprise ... In order to gerrymander, the legislative majority must weaken some of its safe seats, thus exposing its own incumbents to greater risks of defeat – risks they may refuse to accept past a certain point." *Davis*, 478 U.S. at 152 (O'Connor, J., joined by Burger, C.J., and Rehnquist, J., concurring in the judgment) (citations omitted). And if parties did engage in excessive partisan gerrymandering, that could backfire if there were a swing in votes. *Id.* However, the above developments now mean that a legislative majority can achieve even greater partisan advantage without weakening its safe seats or risking such a backfire because they

can better predict how each district will vote, draw district lines along political lines more precisely, and make future adjustments to make sure the requisite margin of safety is maintained as demographics change over time. Thus, while Justice O'Connor is right that the legislative majority will not accept greater risks of defeat past a certain point, the fact is that developments since then have greatly minimized that risk, and thus removed any self-limiting constraints that once existed on partisan gerrymandering.

In the future, the available precision will only increase. We are probably not too far from the day when computers could draw district lines house by house, which could permit a legislature to, say, create districts composed 100% of houses with Republican voters in order to concentrate Republicans in the fewest possible districts and diminish their statewide electoral strength. Presumably, at that point, a reasonable skeptic about justiciability would have to concede that such extreme redistricting must raise a justiciable claim that the courts would vindicate. But it is hard to discern what persuasive principle would distinguish that sort of partisan gerrymandering from the only somewhat milder forms of partisan gerrymandering that are now possible on a block by block basis.

Why the Political Process Cannot Itself Redress the Problem of Partisan Gerrymandering. Another important prudential objection to having judges enforce the equal protection clause against partisan gerrymandering is the view that such redistricting decisions involve political judgments that are best resolved or corrected by the political process. *Davis,* 478 U.S. at 144-55 (O'Connor, J., joined by Burger, C.J., and Rehnquist, J., concurring in the judgment); *id.* at 143-44 (Burger, C.J., concurring in the judgment). Justice O'Connor puts it well when she sensibly asks for some explanation or evidence for why the Court should believe "that political gerrymandering is an

evil that cannot be checked or cured by the people or by the parties themselves." 478 U.S. at 152.

Part of the answer is that the enhanced precision of partisan gerrymandering allows controlling parties to safely perpetuate themselves in office even when they lose a majority of the vote. Thus, the extreme advantage created by modern partisan gerrymandering itself suffices to prevent a majority of the electorate from voting out the representatives who adopted the gerrymander. Where legislators engage in such counter-majoritarian entrenchment, this Court has traditionally been at its most vigorous (not most deferential) in enforcing constitutional limitations on legislative action. *See* Michael Klarman, *Majoritarian Judicial Review: The Entrenchment Problem*, 85 GEO. L.J. 491 (1997). Nor do the minority of voters who favor the political party in control have any incentive to change a system that gives them disproportionate political influence.

Further, even if controlling parties and their voters agree that both they and the nation would be better off without partisan gerrymandering, prisoner's dilemma problems would induce them to engage in the practice nonetheless. Thus, one cannot assume that the adoption of a redistricting plan indicates a legislative judgment that partisan gerrymandering reflects wise policy or even the best interests of its party. And again, this is a problem that has only gotten worse since 1986, because factual developments and the breakdown of the norm of decennial redistricting have only exacerbated these prisoner's dilemma problems.

Over time and across all the states, each of the two major parties is probably equally likely to find itself the exploiter or victim of partisan gerrymandering. They may enjoy the power to exploit partisan gerrymandering in some states but know they will suffer from it in others. Or they may enjoy it now, but realize that in the future the shoe will eventually be on the other foot. Further, because

being a victim means that a temporary loss of elections will relegate the party in one state to a near-permanent minority, the downside risks are enormous. And the victim party and their voters will reasonably fear that the controlling party that benefits from partisan gerrymandering will be more likely to exploit the minority because they no longer need a majority to stay in office. Given these factors, both parties (and their respective voters) should prefer a rule that prohibited either side from engaging in partisan gerrymandering.[2] Reinforcing this conclusion is the fact the parties would likely realize that the current system, featuring fewer and fewer competitive districts, is widely credited with turning the public away from politics and from both major parties. *See, e.g.*, Richard Morrill, *A Geographer's Perspective* 212, 213 in POLITICAL GERRYMANDERING AND THE COURTS (Bernard Grofman ed., 1990).

The trouble is that, even if the parties (and their voters) did prefer a world without partisan gerrymandering, prisoner's dilemma problems will make it irresistible for them to engage in it when they can. *See generally* RUSSELL HARDIN, COLLECTIVE ACTION 1-13 (1982) (describing prisoner's dilemma issues). Instead of cooperating (by refraining from partisan gerrymandering), each party will have an incentive to defect (by engaging in it). The reason is that it knows that, regardless of what the other party does in other times or states, its individual decision to defect by engaging in partisan gerrymandering will make it better off. Engaging in partisan gerrymandering is thus

[2] A similar argument provides one set of explanations for why voters chose to impose term limits on their representatives. *See* Einer Elhauge, *What Term Limits Do That Ordinary Voting Cannot*, CATO POLICY ANALYSIS, No. 328, at I.D (Dec. 16, 1998), *available at* http://www.cato.org/pubs/pas/pa-328es.html; Edward Glaeser, *Self-Imposed Term Limits*, 93 PUBLIC CHOICE 389 (1997); Alexander Tabarrok, *A Survey, Critique, and New Defense of Term Limits*, 14 CATO JOURNAL 333, 345-47 (1994).

what game theorists call a "dominant strategy" even though it makes both parties worse off. *See* ERIC RASMUSEN, GAMES AND INFORMATION: AN INTRODUCTION TO GAME THEORY 19-22 (3d ed. 2001) (defining dominant strategy equilibria).

If the party enjoys temporary control over the political branches, it will have incentives to engage in partisan gerrymandering because it knows that refraining from doing so would not alter the incentives of the other party to engage in it in the future when they enjoy a temporary majority. Nor can state legislatures that conclude partisan gerrymandering is undesirable prohibit it in a way that binds future legislatures, for each legislative session is fully sovereign and could overrule any legislative prohibition. *Cf.* Elhauge, *Preference-Estimating Statutory Default Rules*, 102 COLUM. L. REV. 2027, 2111 (2002) (discussing the phenomenon of trans-temporal collective action problems for legislatures across time, and noting that "Curbing such governmental collective action problems is one important reason to have constitutional laws that put certain matters off limits as a matter of social contract.").

Similarly, if a party controls the political branches in one state, it will have incentives to engage in partisan gerrymandering of congressional districts because it knows that, whether or not it does so, the rival party will have incentives to engage in it in any state where it enjoys similar control over redistricting. One might hope that a mutually beneficial norm would curb such a practice. But to each state party that enjoys control over redistricting, the incentives to defect by engaging in partisan gerrymandering will be irresistible since it will confer great partisan benefits in that state whether or not parties in other states adhere to a norm limiting such a practice. Indeed, given the number of states, their coordination problem would involve the sort of super-prisoner's dilemma problems that economists call a collective action problem.

See MANCUR OLSON, THE LOGIC OF COLLECTIVE ACTION 2, 11-16, 21 (2d ed. 1971).

There is recent evidence that this prisoner's dilemma problem has manifested itself both across states and in states over time. Parties in control of redistricting have justified their extreme partisan gerrymanders on the ground that the other party was doing the same thing in other states or the last round of elections. *See Draw The Line Here*, The Hill, at 16 (July 8, 2003) (noting that recent events have pointed to the strong likelihood of "the unwelcome prospect of an all-out, cross-country redistricting war."). *See also* Todd J. Gillman, *Lawmakers Bitter After Standoff*, The Dallas Morning News, at A7 (May 18, 2003). The above factual and political developments have increased the benefits from defecting from any norm against extreme forms of partisan gerrymandering. Indeed, those developments have apparently made these benefits so large that the parties have even defected from the prior quasi-cooperative norm of at least limiting such partisan gerrymandering to once a decade.

Where such collective action problems exist, the normal solution is a collective agreement to restrain deviations from the collective interest. Here that agreement already exists in the social contract we call the Constitution, whose equal protection clause bars temporary or regional majorities from discriminating against the minority. It is up to the Courts to enforce that collective agreement both for the People and for the long-run benefit of the major parties.

The *Bush v. Gore* Commitment to Vigorously Enforce the Equal Protection Clause Ban on Political Discrimination. Enforcing the equal protection clause against political discrimination is even more justified by the need to be consistent with an important legal development. In *Bush v. Gore*, 531 U.S. 98 (2000), this Court considered a claim that the equal protection clause was violated by allowing vote counters to exercise arbitrary and

standardless discretion. Such standardless discretion raises the risk of *sub rosa* discrimination based on political viewpoint that, precisely because of the lack of any standards, cannot effectively be proven. *See* Elhauge, *The Lessons of Florida 2000*, *supra*. The Court held that this claim was not just justiciable but proved a violation of the equal protection clause, thus extending prior caselaw holding that standardless discretion that permitted such *sub rosa* political discrimination violated the First Amendment. *See Forsyth County v. The Nationalist Movement*, 505 U.S. 123, 131 (1992); *City of Lakewood v. Plain Dealer*, 486 U.S. 750 (1988). And previously this Court has held that a facially neutral filing deadline that was not shown to be intentionally discriminatory nonetheless violated the First and Fourteenth Amendments because its effects discriminated against late-developing independent candidates. *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

If these sorts of subtle and relatively limited forms of political discrimination merit vigorous enforcement of the equal protection clause, then that goes double for partisan gerrymandering, which is openly intentional and had far more extensive and longlasting discriminatory effects. Legal consistency requires no less.

II. Administrable Standards for Judging Partisan Gerrymandering Can Be Developed From Antitrust Monopolization Doctrine

One of the most significant movements in studies of "law and democracy" has been analyzing elections as if they were the end product of electoral markets. *See, e.g*, Persily & Cain, *supra*; Issacharoff & Pildes, *supra*. In both political and economic markets, rivals (firms or parties) compete for the favor of the public, whose voting and purchasing decisions aggregates information about public preferences. Not surprisingly, a number of notable scholars have thus looked to antitrust law as a way to analyze anti-competitive actions

taken by political parties in charge of government. *See, e.g.*, POSNER, *supra*, at 244-45; ELY, *supra*, at 102-03; Pildes, *supra*, at 1614; Issacharoff, *supra*. The Court has effectively endorsed a similar understanding through its embrace of competition as a major value to be protected in its election law jurisprudence. "Competition in ideas and governmental policies is at the core of our electoral process." *Williams v. Rhodes*, 393 U.S. 23, 32 (1968).

One extreme in this literature suggests a per se rule that all redistricting done by politicians is unconstitutional. Issacharoff, *supra*, at 601, 641-48. Such a per se rule would certainly be administrable. But it would contravene this Court's election law precedent, which clearly establishes that nonpartisan gerrymandering to secure each party a share of seats proportional to its voting strength is perfectly constitutional. *Gaffney*, 412 U.S. at 754; *Davis*, 478 U.S. at 130-31 (Plurality Opinion of Justice White, joined by Brennan, Marshall & Blackmun, JJ.); *id.* at 154 (O'Connor, J., joined by Burger, C.J., and Rehnquist, J., concurring in the judgment). Nor is it justified by antitrust analogy. Even though antitrust law is limited to policing decisions by financially interested actors, *see* Einer Elhauge, *The Scope of Antitrust Process*, 104 HARV. L. REV. 667 (1991), it does not deem such self-interest to be sufficient grounds for imposing a per se rule. Instead, it applies the per se rule only to categories of conduct that virtually never have any redeeming virtue to offset their anticompetitive effect. *Northern Pacific v. United States*, 356 U.S. 1, 5-6 (1958). Here, Supreme Court precedent recognizes that legislatures can draw district lines to further the legitimate political purposes of either (a) assuring each party representation proportional to its voting strength, *see supra*, or (b) maximizing competition for each seat even though, in a winner-take-all system, that can mean that a party that wins a bare majority can get a supermajority of seats that is disproportionate to its voting strength, *Davis*, 478 U.S. at 129-30 (Plurality Opinion); *id.* at 158-60 (O'Connor concurrence). *See generally* Nathaniel Persily, *In Defense of Foxes Guarding Henhouses: The Case for Judicial Acquiescence to Incumbent-Protection Gerrymanders*, 116 HARV. L. REV. 649 (2002) ("There is no a priori reason to prefer a districting system that produces many competitive races over one that produces proportional representation.") Thus, one cannot say that legislative gerrymandering virtually always lacks a legitimate purpose.

But there is a body of antitrust law that offers a better analogy that can provide the basis for administrable standards: the antitrust doctrine on monopolization. The typical monopolization case involves a firm that, having earned a temporary monopoly through legitimate competition, tries to extend that monopoly power by impairing rival competition with conduct that lacks any legitimate business purpose. *See* Einer Elhauge, *Defining Better Monopolization Standards*, 56 STAN. L. REV. at IV.C (forthcoming November 2003), *available at* http://www.law.harvard.edu/faculty/elhauge/. Partisan gerrymandering presents the same problem on political markets. A party, having earned a temporary monopoly by winning elections for governor and both legislative houses, seeks to extend that monopoly by impairing the ability of rivals to compete through gerrymandering that lacks any legitimate political purpose.

In both sorts of cases, the mere possession of a monopoly share earned through competition is no cause for legal concern – there is no reason to worry about either a party that is popular enough to win all seats, or a firm that is so efficient that all consumers want to buy from it. The concern arises only when the firm or party abuses its power to ensure the continuation of its monopoly control. In both sorts of cases, a key requirement to proving abuse is normally a showing of discrimination against rivals: in an antitrust case, discrimination against rival firms or those who deal with them, *id.* at III.A.4 & B, in a political case, discrimination against rival parties or those who vote for them. Finally, in both cases, there are requirements of

proving intent that pose no serious obstacle since they boil down to the objective intent that can be inferred from the conduct. Just as "no monopolist monopolizes unconscious of what he is doing," *Aspen Skiing v. Aspen Highlands*, 472 U.S. 585, 602 (1985), so too no legislature redistricts unconscious of the political implications, *Davis*, 478 U.S. at 128-29 (Plurality Opinion); *Gaffney*, 412 U.S. at 752-53.

The antitrust monopolization doctrine requires two elements: (1) monopoly power and (2) exclusionary conduct. *See* Elhauge, *Defining Better Monopolization Standards, supra,* at I. Proving monopoly power requires proving not just a dominant market share, but an ability to price substantially above the competitive level. *Id.* Proving exclusionary conduct requires proof that the conduct not only hampers rival competition but does so without any legitimate business purpose. *Id.* These time-honored antitrust standards offer a natural basis for developing administrable standards for judging efforts to monopolize a political market through partisan gerrymandering.

Defining Political Monopoly Power. Antitrust courts determine "monopoly power" based on two factors: market share and the firm's ability to price above the competitive level. *See id.* at I.A., IV.A-B. A court investigating partisan gerrymandering should investigate similar factors.

The standard for determining how much market share a firm must have to be a monopoly has never been precisely clear. *See id.*; *Eastman Kodak v. Image Technical*, 504 U.S. 451, 481 (1992). Comparably, there is a far more administrable analogous element for partisan gerrymandering – unless a party has control over both legislative houses and the governor's office, there can be no partisan gerrymandering claim, for otherwise any redistricting would require the approval of the rival party. Such monopoly control by one party has traditionally subjected it to heightened constitutional scrutiny. *See Terry v. Adams*,

345 U.S. 461, 496 (1953); *Morse v. Republican Party,* 517 U.S. 186, 269 (1996) (Thomas, J., dissenting).

Also necessary to establishing antitrust monopoly power is proof that a firm can raise prices over the competitive level. Without that ability, even a firm with high market share cannot cause any economic harm. *See* Landes & Posner, *Market Power in Antitrust Cases*, 94 HARV. L. REV. 937 (1981). Similarly, to have political monopoly power, a party must not only enjoy a dominant market share of legislative seats, but a demonstrated ability to garner a number of seats above the competitive level.

Showing that a party has won a proportion of seats that exceeds its proportion of the vote does not suffice to prove that it has gained a number of seats that exceeds the competitive level. After all, it would be constitutionally permissible to dispense with districts and elect all legislators through statewide votes, even though that would result in the party that gets the majority of votes statewide winning all the seats. And a completely random districting system would likely have close to the same result. In either case, the result reflects competition, not monopoly power. Nor would the disproportion that results from such politically random districts in a winner-takes-all system prove any discrimination in favor of one party. District lines that allow a party that wins 51% vote to reap 80% of seats create no political discrimination when a 51% vote for the other party would have the same result in reverse.

Showing that party has control of seats above the competitive level instead requires proof that its statewide percentage of seats is above the reasonable range of what its percentage of the statewide vote typically produces in competitive political markets without similar partisan gerrymandering. Courts can determine this by comparing the party's percentage of seats and votes to the same figures in elections that occurred under district lines that

were drawn by politically divided governments, either historically in that state or contemporaneously in other states.

Because voters are not geographically distributed in random ways, such a historical or contemporaneous comparison will provide a natural range of reasonable variation rather than a strict requirement that winning a majority of the vote must always translate to winning a majority of the seats. *Davis,* 478 U.S. at 134-40 (Plurality Opinion) (rejecting any such strict requirement). But when a redistricting plan has given a party a statewide majority of seats even though it earned a minority of the statewide vote, then it is reasonable to at least presume that the requisite ability to secure a number of seats above the competitive level has been established. Such a showing would then shift the burden of proof on this element to the defender of the gerrymander to show that the results were within the reasonable range produced by past or contemporaneous nonpartisan redistricting.

Again, this test seems even more administrable than its antitrust counterpart, which instead asks whether the monopolist has an ill-defined "substantial" degree of market power, which is in turn defined to exist only when it confers an ability to raise prices "substantially" over competitive levels. *See* Elhauge, *Defining Better Monopolization Standards, supra,* at I.A.

Political Exclusionary Conduct. Merely having monopoly power is not enough to constitute monopolization. Exclusionary conduct must also be proved. This requires proof that conduct "not only (1) tends to impair the opportunities of rivals, but also (2) either does not further competition on the merits or does so in an unnecessarily restrictive way." *Aspen*, 472 U.S. at 605 n.32 (1985) (quoting 3 AREEDA & D. TURNER, ANTITRUST LAW 78 (1978)). Conduct that impairs the ability of rivals to compete does not constitute exclusionary conduct if it can

be explained by a legitimate business purpose. *Aspen*, 472 U.S. at 605, 608.

Again, this suggests natural analogues in the political context. First, to constitute illegal partisan gerrymandering, the district lines must impair the ability of rivals to compete. Here, that element would be proven by demonstrating that, because of how the district lines were drawn, the rival party predictably needs a higher statewide vote percentage than the controlling party to get a statewide majority of the seats. Such a standard would not require proof that the monopoly party has totally excluded its rivals from any chance at winning. But that is an unrealistic standard for proving exclusionary conduct and does not constitute the rule in antitrust law either. Rather, improper conduct that impairs the efficiency of rivals without utterly driving them out of the market is considered exclusionary because it reduces their ability to constrain the monopolist from raising prices. *See* Elhauge, *Defining Better Monopolization Standards, supra,* at III.B; *Aspen Skiing*, 472 U.S. at 587 (affirming monopolization for conduct that did not drive out rival but did impair its ability to compete). Likewise, if partisan gerrymandering means that rival parties would need a higher percentage of the statewide vote than the redistricting party to win a statewide majority of the seats, then their ability to compete has been impaired in a way that increases the discretion of the party with monopoly power to deviate from the wishes of the electorate. It is that sort of system that discriminates against one party and leaves the political process unresponsive to changes in majority preferences.

Second, just as even conduct that impairs rival competition is not exclusionary under antitrust law if it has a legitimate business purpose, so too drawing district lines in a way that impairs rival competition should not be deemed to be exclusionary if it serves a legitimate governmental purpose. One such purpose might be keeping districts reasonably compact and respecting municipal

borders. For example, it is very difficult to district New York state without packing Democratic voters into districts in New York City because of its voting patterns. Such districting does not constitute an unfair abuse of political monopoly, even though it presumably makes it harder for New York Democrats to translate a majority of the statewide vote into a majority of legislative seats. Likewise, it would be a legitimate governmental purpose to draw district lines to comply with the Voting Rights Act even though that might create majority black districts that also tend to make it harder for a Democratic majority in statewide vote to secure a majority of seats. But if the actual district lines drawn are only explicable by a desire to secure crass partisan advantage by giving one party a statewide majority of the seats even when it gets a minority of the statewide vote, then those lines cannot be explained by a legitimate governmental purpose.

Since there are many cases defining the legitimate purposes that can justify district lines, this standard for political exclusionary conduct is, if anything, far more administrable than the comparable antitrust standard, which has not yet resolved what the criteria are for determining when a business purpose is "legitimate" enough to offset any exclusionary effect on rivals. *See* Elhauge, *Defining Better Monopolization Standards, supra,* at I.B.

Administrability and Consistency with *Davis*. In short, the proper antitrust analogy for judging partisan gerrymandering would require proving two elements, each of which has two subelements.

> (1) *Political Monopoly Power* – One political party (a) controls all the state political branches drawing the district lines and (b) has a demonstrated ability to garner a number of seats above the competitive level. The latter would be presumptively shown by evidence that a party was able to get a statewide majority of the seats with a minority of the statewide vote. But that presumption could be rebutted by evidence that its percentage of seats was within the reasonable range reflected in the statewide percentage of seats that such a statewide vote percentage has historically or contemporaneously produced in comparable competitive elections when district lines were not the product of partisan gerrymandering.
>
> (2) *Political Exclusionary Conduct* – The district lines (a) cannot be explained by any legitimate purpose and (b) have been drawn in such a way that the rival party predictably needs a higher statewide vote percentage than the controlling party to get a statewide majority of the seats.

These standards are consistent with those used by the *Davis* Court and plurality, but add content that makes those standards more administrable and addresses many of the reasonable concerns raised by Justice O'Connor's concurrence. Indeed, as noted above, these standards on political monopoly power and exclusionary conduct are actually far more administrable and certain than their antitrust analogues. Given that these existing antitrust standards have for decades been routinely enforced by courts to impose treble damages on firms, it would be inconsistent to say that comparably more administrable parallel political standards are too uncertain for courts to enforce.

Six justices in *Davis* concluded that the justiciable standard for determining whether partisan gerrymandering violated the equal protection clause was whether it had both a discriminatory intent and a discriminatory effect on a political group. *Davis,* 478 U.S. at 127 (Plurality Opinion of Justice White, joined by Brennan, Marshall & Blackmun, JJ.); *id.* at 161 (Powell, J., joined by Stevens, J., concurring in part and dissenting in part) (agreeing on the standard but not on its application). Those factors correspond to the two political monopolization elements noted above.

The discriminatory intent element corresponds to proving political exclusionary conduct. As noted above, this generally does not require proof of subjective intent, since no monopolist – economic or political – is unconscious of what it is doing. Rather, as under antitrust law, the inquiry is mainly into the objective intent implied by the conduct, although proof of subjective intent can (where available) usefully help resolve ambiguities about that conduct. Here the objective intent can be inferred from whether the district lines objectively hampered the ability of rivals to compete in a way that could not be explained by any legitimate governmental purpose. *See Karcher v. Daggett,* 462 U.S. 725, 748 (1983) (Stevens, J., concurring) (gerrymandering violates the Equal Protection Clause only when the redistricting plan serves "no purpose other than to favor one segment – whether racial, ethnic, religious, economic, or political – that may occupy a position of strength at a particular time, or to disadvantage a politically weak segment of the community."); *Davis,* 478 U.S. at 164 (Powell, J., joined by Stevens, J., concurring in part and dissenting in part) (same). Such an inquiry into objective intent would reinvigorate the "discriminatory intent" prong, which has proven somewhat empty as applied by lower courts.

The discriminatory effects element corresponds to proving political monopoly power. Proving that the controlling party was able to secure a number of seats above the reasonable range of seats its vote percentage produced in comparable elections under bipartisan districting would show that "the electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively," leaving them with "'less opportunity to participate in the political processes and to elect candidates of their choice.'" *Davis,* 478 U.S. at 131, 133 (Plurality Opinion). And the combination of proving such a past discriminatory effect with proving that a rival party predictably needs a higher statewide vote percentage than the controlling party to get a statewide majority

of the seats would suffice to show that "the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole" and provides the necessary "evidence of continued frustration of the will of a majority of the voters." *Id.* at 132-33. *See also id.* at 140 (requiring "more than a showing of possibly transitory results").

Further, the proposed standard would avoid the defects in district court findings that led the *Davis* plurality to reverse. The plurality rejected the proposition that unlawful discrimination could be established by proof that in one election a party gained a majority of seats in one legislative house with a minority of the vote. *Id.* at 134-40. Likewise, such proof would not suffice to prove unconstitutionality under the proposed two-part standard. Indeed, such proof would not even suffice to meet the closest subelement under monopoly power, which allows such a showing to be rebutted by proof that the number of seats obtained was within the reasonable range that the relevant vote percentage has produced in competitive political markets without similar partisan gerrymandering. Further, an exclusionary subelement would require the additional proof that the situation would continue because the rival predictably needed a higher vote percentage than the controlling party to gain a majority of seats. This would necessarily mean the disfavored party would need some supermajority to win a majority of seats and had no reasonable prospect than winning a mere majority of the vote would suffice. *Compare id.* at 135 (noting that *Davis* district court "refused to hold that those results were a reliable prediction of future ones," and "did not ask by what percentage the statewide Democratic vote would have had to increase to control either the House or the Senate"). To show the remaining two subelements, a litigant would also have to show control over both legislative houses and the governor's office, as well as the absence of any legitimate governmental purpose.

The proposed standard would provide more concrete content to the applicable test in a way that avoids two

serious concerns raised by Justice O'Connor's *Davis* concurrence. First, Justice O'Connor was concerned that the *Davis* plurality's test would inevitably lead to a requirement of proportional representation that was inconsistent with our history, traditions or political institutions. *Id.* at 145, 147, 156-60 (O'Connor concurrence). The proposed standard avoids that result because it makes clear that gaining a supermajority of seats with a bare majority of the vote does not in any way prove partisan gerrymandering. But while Justice O'Connor is certainly correct that prohibiting such a winner-takes-all approach is inconsistent with our political traditions, nothing in those traditions suggests any inconsistency with the proposition that parties should not be able to guarantee themselves a majority of seats with a minority of the vote. At the same time, the proposed standard would meet the *Davis* plurality's conclusion that the Constitution requires not "a preference for proportionality *per se* but a preference for a level of parity between votes and representation sufficient to ensure . . . that majorities are not consigned to minority status, [which] is hardly an illegitimate extrapolation from our general majoritarian ethic . . . " *Davis*, 478 U.S. at 129 n.9 (plurality). In short, a redistricting plan need not assure that the majority's representation in the legislature is proportional to its share of the electorate, but also cannot thwart the principle of majority rule itself by assuring a consistent majority to the minority of voters.

Second, Justice O'Connor worried that the *Davis* plurality had failed to provide "judicially manageable standards" for identifying unconstitutional partisan gerrymandering. *Id.* at 147-48, 156-58 (O'Connor concurrence). As she correctly observed, in order to determine whether partisan gerrymandering has improperly "degraded" the electoral strength of a political party, courts have to adopt some baseline norm about what degree of electoral strength the party should have had given its share of the vote. *Id.* at 157. Yet the plurality had not identified what baseline norm it had in mind other than

the norm of proportional representation that it had rejected. *Id.* This is hardly surprising for the very first decision finding the issue justiciable, since the Court might reasonably have been reluctant or unable to adopt a more definitive standard before having the issue percolate in the lower courts to create more judicial experience on the topic. But in any event the antitrust norms identified above can provide the requisite baseline norm without resorting to any mandate of proportional representation. That baseline norm is provided by (a) the reasonable range in the share of seats a party typically obtains with the same percentage of the statewide vote in competitive political markets without similar partisan gerrymandering, and (b) the absence of obstacles that, without any legitimate purpose, require the rival party to get a higher statewide vote percentage than the controlling party to get a statewide majority of the seats.

III. Applying These Political Monopolization Standards to this Case

If the Court adopts this standard, it is relatively clear that the plaintiffs in this case alleged enough for the claim to defeat the motion to dismiss. They alleged that, despite normal statewide majorities for Democrats in congressional elections, the Republicans predictably would win between 12 and 14 of the 19 available Congressional districts. J.S. App. 137a-140a. They also alleged that no legitimate purpose could explain the district lines that were drawn, *id.* at 139a-144a, a proposition with which the district court agreed. J.S. App. 9a n.3. And it is undisputed that the Republican Party controlled both legislative houses and the Governor's office at the time of redistricting.

Moreover, as a result of the odd procedural history of this case, there was already a trial on the merits about Act 1, which was in no material way different from the Act 34 map in question here. In it, a districting expert – Professor Alan Lichtman – gave testimony that included a serious

statistical analysis of the Act 1 Map. He studied election returns from 18 different past statewide elections and found that each party had close to fifty percent of the vote on average. *See* Tr. 95. He found that when you broke down this data and figured out how a 50/50 split in the vote translated into Congressional districts, that "for the enacted plan, 14 of the districts have a Republican majority across on average on 19 elections and only five districts have a Democratic majority." Tr. 96. He did a number of robustness checks to make sure that the voting in statewide races corresponded closely to how people vote in Congressional races. Tr. 99-106. He also conducted tests that measured compactness and respect for political subdivisions, and found that the district lines scored very poorly as means of furthering those legitimate purposes. Tr. 116-18, 124-27. The district court agreed with that conclusion. J.S. App. 55a. And the 2002 election confirmed the above allegations and evidence, with the Republicans winning 63% of the seats with less than 50% of the vote.

Thus, the allegations and evidence indicate that: (a) one party controlled all the political branches of government that drew the redistricted lines; (b) the districting plan assured one party a number of seats at least presumptively beyond the competitive level suggested by its minority of the vote; (c) the districting plan required the Democratic party to get a higher percentage of the statewide vote than Republicans to garner a statewide majority of seats, and (d) the controlling party had no legitimate purpose that explained how it drew its districting lines. On remand, a trial court could consider any evidence defendants might want to introduce either on these issues or to rebut their presumptive implication by trying to show the election results were within the reasonable range reflected in the statewide percentage of seats that such a statewide vote percentage has historically or contemporaneously produced in comparable elections when district lines were not the product of partisan gerrymandering.

Even if the Court does not adopt the above proposed test, the district court should be reversed because it adopted

a standard of effective per se legality that is clearly inconsistent with *Davis*. The district court judgment reflected its conclusion that partisan gerrymandering can only give rise to a claim if it completely shut out one party or set of voters from the political process. J.S. App. 11a, 33a. The problem with this reasoning is that it is impossible that decisions on districting could "shut out" anyone from the political process if "shut out" is defined in the way the district court did. Redistricting simply has no impact on "registering to vote; organizing with other like-minded voters; raising funds on behalf of candidates; voting; campaigning; or speaking out on matters of public concern." *Id.* at 39a. If partisan gerrymandering can give rise to a justiciable claim, this standard cannot be good law, as even the most egregious partisan gerrymandering would not stop anyone from registering to vote or organizing.[3]

---

[3] In *O'Lear v. Miller*, 222 F. Supp. 2d 850 (E.D. Mich. 2002), another district court announced an only slightly less impossible standard. "Plaintiffs do not allege (1) that they have no chance of obtaining more favorable congressional districts in the next reapportionment; (2) that Republican candidates would be indifferent to the interests of Democratic citizens; or (3) that the challenged plan would result in Democrats being essentially 'shut out' of the political process; therefore, plaintiffs do not state a cognizable equal protection claim. Nor does the amended complaint contain allegations from which these consequences could be inferred." The last two points have nothing to do with districting – they would require a showing of an alternate law or some type of social bias that rendered fair representation impossible. The first would render every partisan gerrymandering claim unjusticiable because it is always the case that in the next reapportionment a party could win the governorship by majority vote (since governors are elected statewide) and then have that governor veto any further redistricting that had excessive partisan effects. But that provides no meaningful protection in the years before the next mandatory reapportionment nor any protection even then if the disfavored party that year happens to be unsuccessful in the gubernatorial race.

CONCLUSION

The Court should reverse the district court decision dismissing the complaint and remand for application of clarified standards.

Respectfully submitted,

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IN THE

Supreme Court of the United States

RICHARD VIETH, *et al.*,

Appellants,

v.

ROBERT C. JUBELIRER AND JOHN M. PERZEL, *et al.*,

Appellees.

On Appeal from the United States District Court for the Middle District of Pennsylvania

BRIEF OF *AMICI CURIAE* JACK N. RAKOVE, ALEXANDER KEYSSAR, PETER S. ONUF AND ROSEMARIE ZAGARRI IN SUPPORT OF APPELLANTS

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STATEMENT OF INTEREST OF *AMICI CURIAE*[*]

Amici Curiae are historians with a scholarly interest in the era of the American Revolution and the adoption of the Federal Constitution, and the history of political representation. *Amici Curiae* believe that historical understandings of the origins of American ideas of representation may assist the Court in its analysis of the legal issues presented, and submit this brief to aid the Court in that endeavor. *Amici Curiae* also support the general principles of equal representation that appellants seek to vindicate in this suit.

Jack N. Rakove is the W. R. Coe Professor of History and American Studies, and Professor of Political Science at Stanford University, where he has taught since 1980. He also is a visiting professor at New York University School of Law. He was educated at Haverford College, where he earned a B.A. in History in 1968, Edinburgh University, and Harvard University, where he received his Ph.D. in History in 1975. He is the author of four books: THE BEGINNINGS OF NATIONAL POLITICS: AN INTERPRETIVE HISTORY OF THE CONTINENTAL CONGRESS (1979); JAMES MADISON AND THE CREATION OF THE AMERICAN REPUBLIC (revised ed. 2001); ORIGINAL MEANINGS: POLITICS AND IDEAS IN THE MAKING OF THE CONSTITUTION (1996), which won the 1997 Pulitzer Prize in History, the 1997 Fraunces Tavern Museum Book Award, and the 1998 Society of the Cincinnati Book Prize; and DECLARING RIGHTS: A BRIEF HISTORY WITH DOCUMENTS (1997). He is also the editor of INTERPRETING THE

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[*] No person other than *amici curiae*, or their counsel, authored this brief in whole or in part or made a monetary contribution to the preparation or submission of this brief. Perlette Jura, a student at the Stanford Law School, provided valuable research assistance. The parties have given written consent to the filing of this brief, and the letters of consent have been filed with the Court.

CONSTITUTION: THE DEBATE OVER ORIGINAL INTENT (1990); JAMES MADISON: WRITINGS (1999); a collection of scholarly essays on THE UNFINISHED ELECTION OF 2000 (2001); and THE FEDERALIST: THE ESSENTIAL ESSAYS (2003). He has contributed chapters to numerous scholarly collections, and written essays for various law reviews, including the STANFORD LAW REVIEW, UNIVERSITY OF CHICAGO LAW REVIEW, YALE LAW JOURNAL, and YALE JOURNAL OF LAW AND HUMANITIES. He has also published numerous op-ed articles in such newspapers as the LOS ANGELES TIMES, CHICAGO TRIBUNE, WASHINGTON POST, and NEW YORK TIMES.

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INTRODUCTION AND SUMMARY OF THE ARGUMENT

The issue before this Court is whether the Republican-dominated Pennsylvania legislature's drawing of congressional districts for the conceded purpose of favoring Republican candidates in federal elections violates the federal Constitution. This brief is submitted to help the Court understand the formative developments in eighteenth-century American political thought that underlie Article I, Section 4, Clause 1 of the Constitution, which vested the power to regulate congressional elections in state legislatures, subject to congressional alteration, as well as certain essential principles of Article I itself.

As this Court has explained, the founding generation "split the atom of sovereignty," vesting particular aspects of sovereignty in both the States and the new federal government.[1] As the Preamble of the Constitution makes clear, however, sovereignty ultimately resides in the people themselves. In creating the new federal government in 1787, the Framers recognized that a measure of "residuary sovereignty" remained in the States.[2] The Senate was constructed with that "residuary sovereignty" in mind, representing the states as equally autonomous jurisdictions, regardless of differences in population, wealth, or size, and presumably protecting the just powers of the state legislatures, which originally appointed senators. U.S. CONST. art. I, § 3, cl. 1. The members of the House of

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[1] *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring). The effective division of sovereignty under the Articles of Confederation, as framed in 1776-77 and ratified in 1781, is explored in JACK N. RAKOVE, THE BEGINNINGS OF NATIONAL POLITICS, chs. 7-8 (1979).

[2] THE FEDERALIST NO. 43, at 285 (James Madison) (Issac Kramnick ed., 1987); THE FEDERALIST NO. 62, at 365 (Alexander Hamilton or James Madison).

Representatives, however, were to be chosen directly by the people. This body represented an American innovation in government. Under the Articles of Confederation, the state legislatures appointed delegates to the Continental Congress; now one house of the new Congress was to represent the people directly. The Framers intended that, in stark contrast to the British Parliament, the House would be a "mirror" of the people themselves, one unclouded by "rotten boroughs," "pocket boroughs," and the other forms of "corruption" that allowed the Crown to control the composition of Parliament and virtually all of its decisions.

Although "mirroring" is not a fixed concept and can be accomplished in any number of ways, its central requirement is that any regulation of the people's right to select their congressional representatives must promote a rational conception of "fair representation." In keeping with the emergent American idea of popular government, the Framers viewed the role of a state legislature when regulating congressional elections as that of an agent acting on behalf of its principal, *i.e.*, the people themselves. Particularly in light of the state legislature's power to appoint senators, both Federalists and Anti-Federalists understood that it would be plainly impermissible for the state legislature to influence the outcome of elections to the House of Representatives in order to favor whatever "factions" or interests held sway in the state house. Such "self-dealing" would replicate the very corruption of the British system that the Framers sought to eliminate. These historical considerations appear pertinent to this Court's judgment in this case.

ARGUMENT

I. A CENTRAL PRINCIPLE BEHIND THE FRAMING OF ARTICLE I WAS THAT THE HOUSE OF REPRESENTATIVES SHOULD EFFECTIVELY "MIRROR" THE COMPOSITION OF THE NATION IT REPRESENTED.

By the middle decades of the eighteenth century, both the idea and practice of representation in the American colonies had advanced beyond the prevailing norms of contemporary Britain. The constitutional disputes that disrupted Anglo-American relations after 1765 both reflected and magnified this divergence. In Britain, the orthodox view held that the whole people were somehow represented in the House of Commons, notwithstanding the limited extent of the suffrage and the fact that numerous communities sent no members to Parliament. Under the prevailing theory of "virtual representation," these limitations on the scope of representation did not impair the authority of Parliament because its members possessed adequate knowledge of the condition of the realm and were obliged to consider the general good when legislating.[3] In the colonies, by contrast, representation in the colonial assemblies was generally extended to new communities as they were organized, and easy access to land created a relatively large electorate. Representatives, moreover, were expected to be accountable to their immediate constituents. Americans believed they lived under a system of actual representation in which legislators and citizens were closely bound.[4]

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[3] JOHN PHILLIP REID, THE CONCEPT OF REPRESENTATION IN THE AGE OF THE AMERICAN REVOLUTION 50-62 (1989).

[4] REID, CONCEPT OF REPRESENTATION, *supra*, at 128-36; BERNARD BAILYN, THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION 161-75 (1967).

The great constitutional debate that began in 1765 reinforced this conviction, as Americans were driven to explain why they were not subject to the jurisdiction of a Parliament in which they were not, and never could be, properly represented. So effective were American arguments on this head that defenders of Parliament's authority to bind the colonies "in all cases whatsoever" came to rely not on claims of representation but rather on the abstract doctrine of indivisible parliamentary sovereignty.[5] The Americans' belief in the superiority of their system of actual representation in turn shaped the new constitutions that the colonies began drafting in 1776. One critical element of the American concept of representation was that a representative assembly should be a "mirror" or "miniature" of the larger society. One should be able to look at a legislative body and form an accurate impression of its constituents.

Leading statements of these ideas can be found in two influential tracts written in the spring of 1776, as the colonists actively began considering the adoption of new constitutions of government. The clearest and possibly first statement of the relation between representative body and society appeared in John Adams' *Thoughts on Government*.

> The principal difficulty lies, and the greatest care should be employed in constituting this Representative Assembly. It should be in miniature, an exact portrait of the people at large. It should think, feel, reason, and act like them. That it may be the interest of this Assembly to do strict justice at all times, it should be an equal representation, or in other words equal interest among the people should have equal interest in it. Great care

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[5] BAILYN, IDEOLOGICAL ORIGINS, *supra*, at 161-62, 198-202.

> should be taken to effect this, and to prevent unfair, partial, and corrupt elections.[6]

The idea that the distribution of representatives had to be regularly monitored was similarly expressed in *Four Letters on Interesting Subjects*.

> A Constitution should lay down some permanent ratio, by which the representation should afterwards encrease or decrease with the number of inhabitants; for the right of representation, which is a natural one, ought not to depend upon the will and pleasure of future legislatures.[7]

Together, these two statements reflect the leading edge of American opinion. The fundamental units of the polity are individual citizens, whose equality of rights extends to the realm of representation. This recognition explains why the founding generation was so attentive to questions regarding the extent of the suffrage and the importance of securing an "equal" representation in the state legislatures and later the new Federal Constitution. Equality could be and was defined in different ways, ranging from an equality of voters comparable to our modern one-person, one-vote standard, to an equality of the support that different locales gave to government (as measured through taxation), to an equality of the communities themselves, whether towns, counties, or states.[8] But however defined, this led to the notion that there should be a direct and accurate correspondence between the constituent elements of society and the legislature.

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[6] [John Adams], *Thoughts on Government* (Philadelphia, 1776), *reprinted in* 1 FOUNDERS' CONSTITUTION 108 (P. Kurland & R. Lerner eds., 1987).

[7] *Four Letters on Interesting Subjects* (Philadelphia, 1776), *partly reprinted in* 1 FOUNDERS' CONSTITUTION, *supra*, at 639. Some scholars speculate that the author of this pamphlet was Thomas Paine.

[8] *See* REID, CONCEPT OF REPRESENTATION, *supra*, at 120-22 (discussing proposals for parliamentary reform based on different conceptions of equality); and sources cited in n. 11, below.

The idea that representation was primarily about individuals, however, did not go uncontested. In all of the colonies, the rules prevailing before 1776 treated communities rather than individuals as the essential units of representation. Each town or county was typically given a specified number of seats in the colonial assembly, with larger communities like Boston or Philadelphia awarded extra seats, though not in strict proportion to population.[9] In the late colonial era, the Crown had sometimes tried to restrict the extension of representation to newly organized communities, in order to make legislatures more manageable – a practice sharply denounced in the Declaration of Independence.[10] This exclusion ended with independence, but Americans continued to debate whether representation should be based solely on the principle of communities, or whether differences in population or wealth (as measured by taxation) should govern the apportionment of legislative seats.[11] Although this debate occurred primarily within the individual states, it also figured in the framing of the Articles of Confederation. Delegates from the more populous states (including John

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[9] See sources cited in n.11, below.

[10] This is in fact the third in Jefferson "long train of abuses" charged to George III: "He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the legislature, a right inestimable to them and formidable to tyrants only." 1 FOUNDERS' CONSTITUTION, *supra*, at 10.

[11] On this debate and early practice, *see* WILLI P. ADAMS, THE FIRST AMERICAN CONSTITUTIONS: REPUBLICAN IDEOLOGY AND THE MAKING OF THE STATE CONSTITUTIONS IN THE REVOLUTIONARY ERA 234-37 (expanded ed., trans. Rita and Robert Kimber, 2001); MARC KRUMAN, BETWEEN AUTHORITY AND LIBERTY: STATE CONSTITUTION MAKING IN REVOLUTIONARY AMERICA 65-76 (1997); GORDON S. WOOD, THE CREATION OF THE AMERICAN REPUBLIC, 1776-1787, at 170-72 (1969); ROSEMARIE ZAGARRI, THE POLITICS OF SIZE: REPRESENTATION IN THE UNITED STATES, 1776-1850, at 36-60 (1987).

Adams and James Wilson) argued into 1777 that voting in Congress should also be tied to population or wealth.[12]

In the years after 1776, John Adams's image of a representative assembly as a "mirror" of the people appears to have become commonplace. It is restated, for example, in the "Essex Result" of 1778, a protest drafted by the young attorney, Theophilus Parson, in part to justify the principle of equal representation as Massachusetts was debating the adoption of a constitution.

> The rights of representation should be so equally and impartially distributed, that the representatives should have the same views, and interests, with the people at large. They should think, feel, and act like them, and in fine should be an exact miniature of their constituents. They should be (if we may use the expression) the whole body politic, with all it's property, rights, and priviledges, reduced to a smaller scale, every part being diminished in just proportion.[13]

Like the author of *Four Letters on Interesting Subjects*, Parsons also recognized the value of fixing rules for reapportionment.

> The rights of representation should also be held sacred and inviolable, and for this purpose, representation should also be fixed upon known and easy principles; and the constitution should make provision, that recourse should constantly be had to those principles within a very small period of years, to rectify the errors

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[12] RAKOVE, BEGINNINGS OF NATIONAL POLITICS, *supra*, at 139-41, 158-59.

[13] [Theophilus Parsons], *Result of the Convention Holden at ipswich in the County of Essex* . . . (Newburyport, 1778), *reprinted in* THE POPULAR SOURCES OF POLITICAL AUTHORITY 341 (Oscar Handlin & Mary Handlin eds., 1966).

> that will creep in through lapse of time, or alteration of situations.[14]

This vivid image of representation was also invoked at the Federal Convention of 1787 when the framers discussed the composition of the future House of Representatives. "The Legislature ought to be the most exact transcript of the whole Society," James Wilson declared on June 6. George Mason echoed the point. "The requisites in actual representation are that the Reps. should sympathize with their constituents; shd. think as they think, & feel as they feel," even to the point that "the diseases of the people shd. be represented." Mason emphasized the *attitudes* that representatives should possess, but the collective body of lawmakers cannot "think and feel" as the people do unless a close correspondence also exists between the composition of the representative assembly and the larger society.[15]

This theme of correspondence was also echoed in the public debate over ratification, and by Anti-Federalists as much as by the supporters of the Constitution. In the view of the former, the lower house of Congress would simply be too small to represent the entirety of the American people adequately. As Melancton Smith, the author of the *Letters from the Federal Farmer*, observed,

> a full and equal representation of the people, is that which possesses the same interests, feelings, opinions, and views the people themselves would were they all assembled – a fair representation, therefore, should be so regulated, that every order of men in the community,

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[14] [Parsons], *supra*, *repinted in* THE POPULAR SOURCES OF POLITICAL AUTHORITY, *supra*, at 341.

[15] 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, 132-33 (Wilson), 133-34, 142 (Mason) (M. Farrand ed., 1966). The debates of 1787-1788 over representation are further discussed in JACK N. RAKOVE, ORIGINAL MEANINGS: POLITICS AND IDEAS IN THE MAKING OF THE CONSTITUTION 203-43 (1996).

> according to the common course of elections, can have a share in it . . .[16]

Similarly, the Anti-Federalist writer "Brutus" argued that

> The very term, representative, implies that the person or body chosen for this purpose should resemble those who appoint them – a representation of the people of America, if it be a true one, must be like the people. It ought to be so constituted, that a person, who is a stranger to the country, might be able to form a just idea of their character, by knowing that of their representatives. They are the sign – the people are the thing signified.[17]

For Anti-Federalists, a central defect of the Constitution was that the relatively small House of Representatives could no longer offer an adequate mirror or portrait of the larger society.

To be sure, the question of how, precisely, a representative assembly should be turned into this mirror could not be settled by abstract definition or choice of metaphor. For the *Federal Farmer*, for example, the issue was primarily a matter of class: how were ordinary Americans, farmers and tradesmen, to secure election in competition with their wealthier, more cosmopolitan neighbors? Others worried that representatives from far distant states or districts would find it difficult to attend Congress, thereby effectively disfranchising their constituents. It was also, initially, a question whether the people of the states would be better represented through a system of district elections or by a statewide election. Whereas a district system quickly came to be the norm in larger and more populous states, many smaller states retained

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[16] [Melancton Smith], Letters from the Federal Farmer, II, *reprinted in* 2 COMPLETE ANTI-FEDERALIST 230 (H. Storing ed., 1987).

[17] Brutus, III, Nov. 15, 1787, *reprinted in* 2 COMPLETE ANTI-FEDERALIST, *supra*, at 379.

a statewide system for electing representatives until 1842, when Congress exercised its Article I, Section 4 authority to mandate a district system throughout the Union.[18]

The critical point, however, is that members of the Founding generation, on both sides of the debate of 1787-88, thought of political representation as a process of creating a close correspondence between the citizenry and their legislative assemblies. This central premise behind the drafting of Article I generally, and those provisions governing the composition and election of the House in particular, must inform any analysis of the original understanding of the authority of state legislatures under Article I, Section 4, Clause 1 to regulate the election of federal Representatives. In particular, this background norm makes clear that regulations governing the election of Representatives must serve the fundamental goal of creating a "mirror," or close correspondence, between the electorate and its representatives, rather than promoting the partisan interests of those who control the state legislature itself. This understanding is confirmed by a second, widely shared principle that animated the Framers: the new constitution should avoid the corrupting evils of the British system in which those in power sought to perpetuate their power.

II. A SECOND CENTRAL STRUCTURAL PREMISE BEHIND THE FRAMING OF ARTICLE I WAS THAT THE COMPOSITION OF THE HOUSE SHOULD NOT BE CORRUPTED BY THOSE SEEKING TO PERPETUATE THEIR POWER.

The allure that the ideal and image of equal representation had for Americans stemmed from several sources. One was customary: Americans were used to the idea that representation was naturally granted to communities as they were legally organized. Another was controversial: that is,

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[18] ZAGARRI, POLITICS OF SIZE, *supra*, at 36-60, 125-44.

the Crown's refusal to enlarge the assemblies to accommodate new communities became one grievance among the many that the colonists expressed in the decade before independence. A third, however, deserves special emphasis. Americans regarded the denial and restriction of the right of representation in Britain as a significant element in the widely perceived "corruption" of the independence of Parliament and thus a violation of the true principles of the British constitution, as those principles were settled in the Glorious Revolution of 1688 and its aftermath. Colonial perceptions of the distortion of proper representation in the mother country suggest that Americans were concerned about the capacity of those holding power to manipulate the rules of representation to their partisan advantage. To meet its principled objectives, the system of representation had to be free of the taint of corruption and improper influence that were widely believed to permeate the eighteenth-century British constitution.

Well before the Revolutionary crisis, the colonists eagerly consumed the writings of British political writers who denounced the "rotten" and "corrupt" features of the eighteenth-century British constitution.[19] Americans understood that the suffrage was far more limited in the mother country than it was in the colonies. They also knew that numerous members of the House of Commons sat for "rotten boroughs" with minuscule human populations, while populous communities, such as the manufacturing towns of the Midlands, had never been granted the right to elect representatives. They were also aware of the existence of "pocket boroughs" where a dominant government interest or local aristocrat easily controlled small numbers of voters. Americans repeatedly read that the Crown used all the modes of patronage at its disposal (offices, honors, and pensions) to

[19] Such criticisms dated to the seventeenth century; *see* JOHN LOCKE, SECOND TREATISE OF GOVERNMENT §§ 157-158 (1689).

maintain its control of the House of Commons, making docile "placemen" of members who were supposed to check the abuse of power by the executive.

Together, these practices of "corruption" threatened the principle of parliamentary supremacy confirmed in the Glorious Revolution of 1688. A limited suffrage and a mal-apportioned House of Commons made Parliament an unrepresentative institution. The theory of "virtual representation" held that it did not matter whether particular communities or large segments of the population lacked the suffrage so long as Parliament had information about their condition and regarded itself as responsible for promoting the welfare of the realm. But Americans generally dismissed this theory as a crude fiction which masked the effective control that the Crown enjoyed over both houses of Parliament. The denial of representation to populous boroughs seemed transparently unjust. As the Massachusetts radical James Otis famously asked, "To what purpose is it to ring everlasting changes to the colonists on the cases of Manchester, Birmingham, and Sheffield, who return no members? If those now so considerable places are not represented, they ought to be."[20]

It did not, therefore, require the invention of political parties in the 1790s or Elbridge Gerry's famous "gerrymander" of 1812 to expose the danger of allowing government to manipulate the design of electoral districts at the expense of equal representation. The perception of the royal abuse of its power to grant (or withhold) the right of representation as part of the chartering of boroughs was well established in America even before 1765, and seemed all the more ominous after a docile Parliament began enacting legislation infringing colonial rights and liberties. All that

[20] JAMES OTIS, CONSIDERATIONS ON BEHALF OF THE COLONISTS . . ., at 9 (London, 1765), *quoted in* BAILYN, IDEOLOGICAL ORGINS, *supra*, at 169.

had to happen after 1776 was for Americans to transpose the source of this threat from the British crown to their own republican legislatures. As we have already seen, they were more than prepared to do so, first in framing the state constitutions of the mid 1770s, then in adopting the Federal Constitution in 1787-1788.

III. IN EXERCISING THEIR CONSTITUTIONAL AUTHORITY TO REGULATE THE ELECTION OF REPRESENTATIVES, STATES ACT AS AGENTS WHOSE ACTIONS MUST NOT PROMOTE THEIR OWN INTERESTS BUT THOSE OF THEIR PRINCIPALS, THE PEOPLE THEMSELVES.

The emergent American conception of representation was part of a broader shift in political thought in which the people came to regard themselves not as subjects but as rulers. The fundamental structural principle of the federal Constitution (as well as the state constitutions of the period) is thus that a sovereign People has delegated its powers to government agents to act in their interests.[21]

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[21] *See* BAILYN, IDEOLOGICAL ORIGINS, *supra*, at 198-229; Akhil Reed Amar, *Of Sovereignty and Federalism*, 96 YALE L. J. 1425, 1430-36 (1987); *Carter* v. *Carter Coal Co.*, 298 U.S. 238, 294-96 (1936). State constitutions of the period commonly referred to the officers of government as the trustees, servants, or agents of the sovereign people, *see, e.g.*, MASS. CONST., pt. 1, art. IV (1780), *reprinted in* 1 THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE UNITED STATES 956, 958 (B.P. Poore ed., 2d ed. 1877) [hereinafter "Poore"]; N.H. CONST., pt. 1, art. VIII (1784), *reprinted in* 2 Poore, *supra*, at 1280, 1281; MD. CONST., Declaration of Rights, art. IV (1776), *reprinted in* 1 Poore, *supra*, at 817, 817-18; PA. CONST., A Declaration of the Rights of the Inhabitants of the State of Pennsylvania, art. IV (1776), *reprinted in* 2 Poore, *supra*, at 1540, 1541, and spoke of the vesting of the legislative or executive powers in officers or assemblies, *see, e.g.*, N.H. CONST., pt. 2 (1784), *reprinted in* 2 Poore, *supra*, at 1280, 1284; PA. CONST., Plan or Frame of Government, §§ 1, 2 (1776), *reprinted in* 2 Poore, *supra*, at 1540, 1542; S.C. CONST. art. VII (1776),

Viewed against a legacy of British politics that predisposed Americans to mistrust the abuse of government discretion in setting basic rules of representation, the Times, Places and Manner Clause of Article I is properly understood as a limited delegation of power to legislatures, as agents, to regulate elections in a manner that promotes the interests of the people, not those of the legislature itself. Indeed, this understanding explains why this seemingly minor provision became controversial during ratification.

The clause was first prepared by the Committee of Detail that met between July 26 and August 6, 1787. It was debated in the Convention on August 9, when two delegates from South Carolina – a State notorious among the Framers for its mal-apportionment – moved to delete the proposed congressional oversight of state legislation. That motion was rejected, the language of the proposed clause was slightly modified, and it was then approved unanimously.[22]

The discussion of August 9 is most notable for James Madison's vigorous defense of potential congressional intervention to correct improper state regulation of elections. Madison warned that

> [i]t was impossible to foresee all the abuses that might be made of the discretionary power [afforded the States under the Time, Places and Manner clause]. Whether the electors should vote by ballot or vivâ voce, should assemble at this place or that place; should be divided into districts or all meet at one place, shd all vote for all

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reprinted in 2 Poore, *supra*, at 1615, 1617; N.Y. CONST. art. II (1777), *reprinted in* 2 Poore, *supra*, at 1328, 1332.

[22] The evolution of the clause can be traced in 2 RECORDS OF THE FEDERAL CONVENTION, *supra*, at 135, 153, 155, 165, 179, 239-42 (debate of Aug. 9), and 613 (for final modification prohibiting Congress from altering "the places of chusing Senators," which was done, according to James Madison's notes, "to exempt the seats of Govt in the States from the power of Congress").

the representatives; or all in a district vote for a number allotted to the district; these & many other points would depend on the Legislatures. and might materially affect the appointments. *Whenever the State Legislatures had a favorite measure to carry, they would take care so to mould their regulations as to favor the candidates they wished to succeed. Besides, the inequality of the Representation in the Legislatures of particular States, would produce a like inequality in their representation in the Natl. Legislature, as it was presumable that the Counties having the power in the former case would secure it to themselves in the latter.*[23]

As this last sentence makes clear, Madison regarded as just causes for congressional regulation both the legislative manipulation of electoral rules to secure partisan goals and the denial of the substantive equality of the voters. These standards go beyond more obvious concerns that may have prompted this clause in the first place: the fear that recalcitrant state legislatures would try to hamstring the national government simply by failing to provide for the election of representatives or by defaulting on their responsibility to appoint senators. In the case of the House of Representatives, the true right to be protected belonged to the people, who were to be treated equally, and not to the state legislatures, which were only instrumentally necessary to arrange for the conduct of elections. In the brief debate that followed, none of the speakers challenged Madison's statement.[24]

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[23] 2 RECORDS OF THE FEDERAL CONVENTION, *supra*, at 240-41 (emphasis added).

[24] The Constitution did not, of course, specify what system the states had to apply. But the logic of congressional oversight was to provide a corrective to the problem of disparities in districts, for in a statewide system of election, all individual votes would necessarily weigh equally (so long as voters enjoyed ready access to the polls). In the federal elections of 1788-1789, the states adopted three distinct modes of electing the first House. For the relevant legislation and other sources, *see* 1-3 DOCUMENTARY HISTORY OF THE FIRST FEDERAL ELECTIONS (M. Jensen & G. Deboer eds., 1976-1989).

There is a further and rather obvious reason to conclude that the framers of the Constitution would have been disturbed by patterns of districting that were contrived to advance the preferences of state legislators rather than voters. The state legislatures were already to be directly represented in the Senate. There could be no pretext for asserting that a second form of representing the preferences of legislators more than voters was needed. Among the several arguments made to justify both the equal state vote in the Senate and the election of senators by the legislatures, arguably the most important was the role this institution would play in protecting the interests of the state governments. As George Mason observed on June 7, immediately before the Convention first approved the election of senators by the legislatures: "The State Legislatures also ought to have some means of defending themselves agst. encroachments of the Natl. Govt."[25] The framers reached a broad consensus on this point early in their debates; thereafter delegates from the small states reiterated the same theme as they struggled to secure an equal state vote in the Senate.[26] From the standpoint of the original intentions of the framers of the Constitution, the construction of the Senate afforded a sufficient security for the protection of the essential interests of the state governments.

The possibility that Congress could override state electoral provisions at any time proved a source of controversy during ratification. Anti-Federalists predictably argued that the

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[25] 1 RECORDS OF THE FEDERAL CONVENTION, *supra*, at 155.

[26] See, for example, the remarks of Roger Sherman on July 14: He "urged the equality of votes not so much as a security for the small States; as for the State Govts. which could not be preserved unless they were represented & had a negative in the Genl. Government." 2 RECORDS OF THE FEDERAL CONVENTION, *supra*, at 5.

power would be subject to congressional abuse, which would typically take the form of managing the electorate by restricting access to inconvenient polling places. "The elections may be held at one place, and the most inconvenient in the State," Patrick Henry warned; "or they may be at remote distances from those who have a right of suffrage: Hence nine out of ten must either not vote at all, or vote for strangers; For the most influential characters will be applied to, to know who are the most proper to be chosen."[27] Variations on this theme were repeated in other states. One New York Anti-Federalist, for example, warned that Congress might decide upon

> holding an election for the whole state at Poughkeepsie, at New-York, or, perhaps, at Fort-Stanwix: who will then be the actual electors for the house of representatives? Very few more than those who may live in the vicinity of these places. Could any others afford the expence and time of attending? And would not the government by this means have it in their power to put whom they pleased in the house of representatives?[28]

Although objections like these reflected the paranoid, parade-of-horribles strain in Anti-Federalist thinking, they also testified to a keen awareness of the danger that any legislative body could be prone to manipulating the rules of election to advance the interests of those in power, and the importance of preventing such manipulation.

A more sophisticated Anti-Federalist response came from the Federal Farmer and Melancton Smith, who faulted the Constitution for not explicitly requiring elections by districts. In a statewide election, where mere pluralities were likely to

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[27] Patrick Henry, Speech in Virginia ratifying convention, June 5, 1788, *reprinted in* 9 DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 964-65 (J. Kaminski & G. Saladino eds., 1990).

[28] Cato, Letter VII, *reprinted in* 2 COMPLETE ANTI-FEDERALIST, *supra*, at 125.

be enough, those who lived in towns or enjoyed other social advantages would find it easier to coalesce on candidates than farmers scattered across the landscape. Conversely, election by districts would have the dual advantage of encouraging the choice to be made by majority and to produce candidates more truly representative of their constituents. In this calculation, the risk of allowing some manipulation of districts to occur was offset by the likelihood that such constituencies, if properly constituted, would fulfill the goal of producing a correspondence between voters and lawmakers.[29]

Most Federalist responses to these allegations took the form of identifying the exposed position in which the national government would find itself if states failed to make satisfactory provision for the election of members of Congress or simply refused to participate. Because the state legislatures were often portrayed as net losers in a competition for authority with the proposed government, it followed that they would have an institutional incentive to hobble Congress by obstructing elections. But the possibility that state legislatures would manipulate the electoral system for other reasons was also discussed by some Federalists. Again the most notable statement comes from Madison, who repeated the same concern he had voiced at Philadelphia. "Some States might regulate the elections on the principles of equality, and others might regulate them otherwise," Madison told the Virginia ratification convention. "The diversity would be obviously unjust" – unjust, that is, to the people themselves, not their legislators. Madison cited the particular case of South Carolina, where mal-apportionment was already and would long remain a problem, but also noted that "Elections are now regulated unequally" in other states as

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[29] Federal Farmer, XII, *reprinted in* 2 COMPLETE ANTI-FEDERALIST, *supra*, at 294-301. In the New York convention, Smith proposed a constitutional amendment requiring election by majority vote in districts. 2 FOUNDERS' CONSTITUTION, *supra*, at 268-70.

well. "Should the people of any State, by any means be deprived of the right of suffrage, it was judged proper that it should be remedied by the General Government."[30] Madison's position on this critical question may have been more advanced and more thoroughly conceived than that voiced by other participants in the debate, but it was also consistent with the egalitarian thrust that had characterized the leading edge of American thinking since 1776 if not indeed earlier.

The general discussion of the ratification period thus supports two critical conclusion about the Times, Places and Manner Clause. First, it was possible in 1787-1788 to conceive of the purpose of this clause in robust terms, as a vehicle not only to ensure that states conducted congressional elections, but also that in doing so they conformed to principles of just representation, of which the most important was to assure that votes counted equally, in the same sense in which modern constitutional jurisprudence speaks of the one person, one vote standard. As Madison's comments in particular make clear, the clause was concerned with the justice of elections as well as the mechanisms of taking the vote. Second, Federalists and Anti-Federalists were equally alert to the danger of legislative manipulation of congressional districts. Drawing upon their knowledge of British history as well as expressing the fears of concentrated power that were already embedded in American political ideology, they respectively feared that either the state legislatures or Congress would discover partisan, self-aggrandizing incentives to use the design of electoral districts

[30] James Madison, Speech of June 14, 1788, *reprinted in* 10 DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, *supra*, at 1260. By suffrage, Madison clearly does not mean the right to vote per se, but to have one's vote properly weighed in a scale of representation. On South Carolina, *see* ZAGARRI, POLITICS OF SIZE, *supra*, at 46-53.

for improper and unjust purposes. They differed only in the location of the danger.

Of course, amid the prevailing absence of cohesive, disciplined political parties of the kind that would soon develop so quickly, Americans in the 1780s did not foresee the precise form of partisan manipulation that has flourished in recent decades. But they plainly recognized the roles that "factions" would play in seeking governmental power, and both sides of the constitutional debate treated the possibility of legislative manipulation of election rules as a real threat to the fundamental right of representation. As both sides also accepted the image of representation as a "mirror," they would also understand how contemporary methods of designing electoral districts to maximize partisan advantage embody only a modern version of a general problem with which they were already familiar, and that the Constitution was intended to prevent.

CONCLUSION

In light of this historical analysis, *Amici Curiae* believe that congressional districting schemes that are consciously contrived to convert the majority preferences of voters into the majority preferences of state legislators violate the fundamental principle of popular representation as it was understood by the framers and ratifiers of the constitution.

As noted earlier, the controlling image of a representative assembly as a mirror, miniature, or portrait of society is susceptible to more than one interpretation or application. The founding generation itself was uncertain, for example, whether the only unit to be measured in defining the equality of districts was population, or whether apportionment should also recognize wealth, as measured in the number of taxpayers or the quantity of taxes. At the state level of politics, where it was feasible to think of towns and counties as the essential units of representation, one could start with a

principle that treated all communities as equally entitled to seats in the legislature, and then allocated additional seats to a handful of larger towns. At the national level, however, the small size of the House of Representatives necessitated lumping communities into districts larger than counties or towns, and thereby opened opportunities for creative districting that politicians have been learning to exploit ever since.

Population equality among districts within a state is one criterion for satisfying the founding generation's principled criteria for representation. But there are circumstances under which it cannot be a sufficient or sole criterion. Districts that systematically maximize the influence of one class of voters while systematically diluting the influence of another are inconsistent with the constitutional goal of producing a deeper correspondence between the electorate and its representatives, and would fall under James Madison's conception of "the abuses that might be made of the discretionary power" of the state legislatures.

A decade after he wrote the Essex Result, Theophilus Parsons defended the Terms, Places and Manner Clause on grounds that have a strikingly modern ring. Speaking as a Federalist delegate to the Massachusetts ratification convention, Parsons reminded his colleagues of the danger that members of the national government – specifically the Senate – might abuse their formal connections and influence with the state legislatures to deprive significant segments of the citizenry of their just representation.

> But a state legislature, under the influence of their senators . . . or under the influence of ambitious or popular characters, or in times of popular commotion, and when faction and party spirit run high, would introduce such regulations as would render the rights of the people insecure and of little value. They might make an unequal and partial division of the states into districts,

> for the election of representatives, or they might even disqualify one third of the voters.[31]

A plausible case can be made that the modern practice of reapportionment, undertaken at a time "when faction and party spirit run high," has proved increasingly capable of attaining exactly the results that Parsons denounced – not, it is true, by disqualifying voters in the formal sense, but by drawing district lines in ways that are "unequal and partial" in terms of their disparate impact on the results that finally matter.

In the 1780s, as in the 1950s, population inequality among districts would have been the most glaring example of an abuse. Political parties had not yet formed as mechanisms for mobilizing voters and crafting programs of public policy. The principal social differences within any state would separate farmers from inhabitants of port towns, and densely settled coastal regions from newer communities in the interior. Under such conditions, it was only natural to think of attaining a rough but measurable equality among districts as the obvious means of preserving the genuinely representative character of a legislature.

Once political parties form, however, and provide voters with new and primary criteria for defining their political identity, it becomes a legitimate question whether the population equality of districts suffices to meet the founders' test. For the voters themselves, party allegiance has become the most obvious way of stating their political identity, and thereby constituting, in the aggregate, the representative "mirror." One would not, of course, expect that a statewide distribution of voters would be replicated in every district within a state. But when ample evidence exists of the care with which state legislative majorities have consciously designed districts not only to preserve safe seats for their own

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[31] Theophilus Parsons, Speech of Jan. 16, 1788, 6 DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, *supra*, at 1217-18.

party but to turn a minority of the popular vote into a supermajority of congressional seats, there is good reason to suspect that they have "a favorite measure to carry," and are in fact improperly "taking care so to mould their regulations as to favor the candidates they wished to succeed."

On this basis, then, *amici curiae* conclude that the last Pennsylvania redistricting contradicts the fundamental principles of representation laid down by the generation that wrote the first American constitutions of the 1770s and 1780s.

Respectfully submitted,

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Appellees.

On Appeal from the United States District Court for the Middle District of Pennsylvania

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BRIEF OF THE DKT LIBERTY PROJECT AS *AMICUS CURIAE* IN SUPPORT OF APPELLANTS

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BRIEF OF THE DKT LIBERTY PROJECT AS *AMICUS CURIAE* IN SUPPORT OF APPELLANTS

The DKT Liberty Project respectfully submits this brief as amicus curiae in support of the Appellants in accordance with the provisions of Supreme Court Rule 37.2. All parties have consented to this filing, and their written consents have been lodged with the Court.[1]

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[1] *Amicus* certifies that no counsel for a party authored this brief in whole or in part, nor has any person nor entity, other than *Amicus* or its counsel, made a monetary contribution to the preparation or submission of this brief.

INTEREST OF *AMICUS CURIAE*

As Thomas Jefferson warned, "the natural progress of things is for liberty to yield and government to gain ground." Mindful of this trend, the Liberty Project was founded in 1997 to promote individual liberty against encroachment by all levels of government. The Liberty Project is a not-for-profit organization that advocates vigilance over regulation of all kinds, especially restrictions of individual civil liberties such as the right to vote because such restrictions threaten the reservation of power to the citizenry that underlies our constitutional system. To help preserve these essential rights, the Liberty Project advocates for the rights of individual Americans to choose the officials who will represent them. Increasing electoral fairness and providing voters with meaningful options to select public officials – rather than granting advantages to the re-election of incumbent officeholders – is a paramount goal of the Liberty Project and at the heart of its mission.

STATEMENT OF THE CASE

The core question at issue in this case is whether Pennsylvania Act 34 – which re-drew Congressional districts in Pennsylvania based on the 2000 census – constitutes an unconstitutional partisan gerrymander. At a more general level, however, this case is another in a long line of congressional, state and local redistricting cases stretching back to the Court's decision in *Thornburg v. Gingles*, 478 U.S. 30 (1986), in which the use of single-member district reapportionment plans have incited constitutional controversy. This is at least in part because the advances in technology and the precision of modern census information have made the crafting of single-member districting plans into an outcome determinative endeavor – we know as soon as the districts are created who the winners and losers are

likely to be or, more precisely, which groups of voters will be able to elect their candidates of choice and which will not.

The sole purpose of this brief is to propose a remedy that could be used to cure any constitutional deficiency in the Pennsylvania plan, and that that remedy also could be used more broadly to overcome the seemingly never-ending legislation-litigation cycle by eliminating the outcome determinative nature of single-member redistricting plans in a manner that is – essentially – above constitutional challenge. This elixir is the use of multimember districts with alternative voting mechanisms.[2]

This Court consistently has held that multimember districts are not per se unconstitutional. Rather, it is the traditional "winner-take-all" approach that often leads to minority vote dilution in the context of multimember districts. *See, e.g., Rogers v. Lodge*, 458 U.S. 613, 616-17 (1982) (noting same); *Whitcomb v. Chavis*, 403 U.S. 124, 158-159 (1971) (same). The traditional "winner-take-all" form of at-large elections in multimember districts allows each voter to cast only one vote for each candidate, up to the number of available seats in the district. But a number of alternative voting mechanisms exist for use in multimember districts that do not employ a winner-take-all approach and thus avoid this constitutional pitfall. Three alternative voting

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[2] Although multimember districts with alternative voting mechanisms cannot be used to elect Members of Congress under current law, *see* 2 U.S.C. § 2c, that statutory requirement may be unconstitutional given the outcome determinative nature of single-member districting plans. Although that constitutional question is not before the Court in this case, the Court's decision in this case invariably will influence the consideration of redistricting litigation at the state and local as well as the Congressional levels.

mechanisms in particular have been employed most often by States and have received the most attention from the courts: cumulative voting, limited voting, and preference (or choice) voting.[3]

1. Cumulative Voting

Voters in a multimember district that uses a cumulative voting system are given a certain number of votes that they can distribute among a group of candidates in any proportion they choose. Typically, voters receive as many votes as there are seats to fill. Voters may give all of their votes to one candidate ("plumping"), give one vote to each of several candidates, or distribute their votes in any other desired combination. For example, in the case of an at-large district in which three seats are available, voters would be assigned three votes. They may cast three votes for a single candidate, cast one vote for each of the three candidates, or make intermediate distributions with some candidates

[3] It is important to note at the outset that the use of multimember districting plans with alternative voting mechanisms is fully consistent with the Equal Protection Clause's "one-person, one-vote" requirement. The requirement is intended to ensure that votes cast by all individuals are imbued with equal strength. *Reynolds v. Sims*, 377 U.S. 533, 577 (1964). The principle inherent in the one-person, one vote mandate is not compromised by the use of multimember districts and alternative voting mechanisms. *See Chapman v. Meier*, 420 U.S. 1, 15 (1975) (reaffirming prior holding that States may devise apportionment plans in multimember districts to comply with one person, one vote principle); *McCoy v. Chicago Heights*, 6 F. Supp. 2d 973, 984 (N.D. Ill. 1998) ("By allowing each voter the same number of votes, cumulative voting subscribes to the one-person, one-vote requirement with numeric exactness.").

receiving multiple votes and some candidates receiving single votes. Cumulative voting gives minority groups that vote as a bloc the option of concentrating their votes on a few candidates and ensuring their election.

In *Dillard v. Chilton County Bd. of Education*, the court approved a settlement imposing cumulative voting as a remedy for a vote dilution claim in a multimember district. 699 F. Supp. 870, 876. (M.D. Ala. 1988). The court focused its analysis specifically on whether the minority voters in the county would have the potential to elect the representatives of their choice, even in the face of the "worst case scenario" – the most racially polarized voting pattern. Under that scenario, it is assumed that the majority group sponsors only as many candidates as there are seats to fill and spreads its votes evenly among its candidates, with no "cross-over voting" for the minority preferred candidate. *Id.* at 874. The court found that a minority group could elect its preferred candidate in a cumulative voting system – even under the most unfavorable conditions – as long as it had a population meeting or exceeding the "threshold of exclusion."[4] If the minority population exceeds or approaches the threshold of exclusion, cumulative voting has virtually the same effect as the creation of single-member, majority-minority districts.

[4] As an empirical matter, the threshold of exclusion is "the percentage of the vote that will guarantee the winning of a seat even under the most unfavorable circumstances," typically expressed as "1 / 1+ # of seats." *Dillard*, 699 F. Supp. at 874. An analysis of the threshold of exclusion can be undertaken with respect to any alternative voting mechanism and the details of the chosen voting mechanism (such as the number of counties and thus the number of seats at stake) can be tailored to fit the actual characteristics of the district in question.

Because this number typically is similar to the number necessary for the creation of a single-member, majority-minority district, the two remedies generally have virtually the same effect. Accordingly, the *Dillard* court found that cumulative voting was an appropriate, alternative remedy for curing the alleged Section 2 violation. *Id.* at 875.

Cumulative voting has been used in a number of States, including Alabama, Texas, New Mexico and Illinois. *See, e.g., McCoy*, 6 F. Supp. 2d at 974 (adopting cumulative voting system for election of city aldermen and park board members in Chicago Heights, Illinois); *Dillard*, 699 F. Supp. at 876 n.7 (approving cumulative voting as proposed remedy for violation of the Voting Rights Act and noting that cumulative voting "is becoming rather common in Alabama"); Robert R. Brischetto & Richard L. Engstrom, *Cumulative Voting and Latino Representation: Exit Surveys in Fifteen Texas Communities*, 78 Soc. Sci. Q. 973, 974 (December 1997) ("By mid-1997, at least fifty-seven local governments in five states had adopted cumulative voting to elect their legislative bodies."); Richard L. Engstrom, *Modified Multi-Seat Election Systems as Remedies for Minority Vote Dilution*, 21 Stetson L. Rev. 743, 757 (1992) (describing the use of cumulative voting in Peoria, Ill.); Richard L. Engstrom, et al., *Limited and Cumulative Voting in Alabama: An Assessment After Two Rounds of Elections*, 6 Nat'l Pol. Sci. Rev. 180, 185-189 (1997) (describing the use of cumulative and limited voting by localities in Alabama since 1988); Pamela S. Karlan, *Maps and Misreadings: The Role of Geographic Compactness in Racial Vote Dilution Litigation*, 24 Harv. C.R.-C.L. L. Rev. 173, 233 (Winter 1989) (describing the use of cumulative voting in city council elections in Alomogordo, New Mexico).

Illinois has more experience than any other State with cumulative voting. In 1870, the Illinois Constitutional Convention adopted cumulative voting for elections of representatives to the Illinois General Assembly. Illinois Assembly on Political Representation and Alternative Electoral Systems, Executive Summary, at 15 (Spring 2001) ("Illinois Assembly Executive Summary"). Cumulative voting remained in effect in Illinois Assembly elections until 1982. *Id.* at 17. During the two decades of using single member districts that have followed, Illinois voters have had fewer electoral choices, voter turnout has declined and it is likely that minority representation has not been as strong as it would have been if cumulative voting had been maintained. *Id.* at 18-22.

2. Limited Voting

Limited voting operates in a manner similar to cumulative voting. In a limited voting system, each voter casts one vote per candidate to fill a number of seats, but the total number of votes that each voter may cast is fewer than the total number of seats to be filled. In a three-seat district, for example, each voter may receive one vote. This limitation prevents a majority voting as a bloc from filling every available seat with its chosen candidates, thus affording minority groups the opportunity to fill the void. Because the number of votes allotted to each voter in a limited voting scheme is malleable, such schemes can be tailored to satisfy the unique circumstances of a particular district so that if a minority group votes as a bloc it will have the ability to elect its candidate of choice.

Limited voting has been court-approved for use and implemented for local elections in North Carolina, Alabama, Connecticut and Pennsylvania. *See, e.g., Moore v. Beaufort County*, 936 F.2d 159, 164 (4th Cir. 1991) (approving

settlement that included a multimember district with limited voting to elect Beaufort County, North Carolina Board of County Commissioners); *Orloski v. Davis*, 564 F. Supp. 526, 536 (M.D. Pa. 1983) (rejecting equal protection, State Constitution and Voting Rights Act challenges to limited voting scheme for judicial elections in Pennsylvania); *Lo Frisco v. Schaffer*, 341 F. Supp. 743, 751 (D. Conn. 1972) (upholding statute calling for limited voting scheme for Boards of Education elections in Connecticut); *Kaelin v. Warden*, 334 F. Supp. 602, 609 (E.D. Pa. 1971) (upholding limited voting scheme to elect County Commissioners in Bucks County, Pennsylvania). *See also* Richard H. Pildes and Kristen A. Donoghue, *Cumulative Voting in the United States*, 1995 U. Chi. Legal F. 241, 266 (1995) ("Between twenty and twenty-three jurisdictions in Alabama use limited voting[.]"); Karlan, 24 Harv. C.R.-C.L. L. Rev. at 225 (noting that New York Court of Appeals upheld limited voting for New York City elections).

3. Preference (or Choice) Voting

Preference voting – also known as choice voting – requires voters to rank candidates in their order of preference by placing numbers on the ballot next to each candidate's name. Votes are then tallied in a series of rounds. In the first round, candidates receiving a specified percentage of first-choice votes win a seat. That percentage is the fewest number of votes that a candidate must receive to win a seat.[5] After the first round, the winning candidates' excess votes (the number received above the minimum needed to win a seat) are reassigned based on the second choice preferences of all the voters who ranked the winning candidates as their first choice. Following this reassignment, the second round

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[5] This number is the same as the threshold of exclusion.

of counting is undertaken and any candidate receiving more than the minimum in that round is awarded a seat. If no candidate reaches the minimum, the lowest vote-getter in the election is disqualified and that candidate's votes are reassigned based on the second choices selected by the voters. This process of seating and disqualifying candidates in rounds of counting continues until every seat is filled.

Preference voting has been employed successfully in elections in Cambridge, Massachusetts, New York City, and at least two dozen other jurisdictions expressly for the purpose of increasing minority representation in those jurisdictions. *See* Steven J. Mulroy, *Alternative Ways Out: A Remedial Road Map for the Use of Alternative Electoral Systems as Voting Rights Act Remedies*, 77 N.C. L. Rev. 1867, 1879 (June 1999). These efforts have met with marked success. When New York City began using preference voting in 1970, for example, the number of successful African-American and Hispanic candidates increased such that the number of representatives from these minority groups nearly matched the percentages of those groups in the overall population. *Id.* at 1893. Representation for these groups also proportionally increased in elections following 1970 as their percentages of the population increased. *Id.*

SUMMARY OF THE ARGUMENT

A range of options beyond the traditional remedies exist that can address the infirmity of partisan gerrymandering. These options include the creation of multimember districts with alternative voting mechanisms such as cumulative voting, limited voting, and preference (or choice) voting. Multimember districts with alternative voting mechanisms can remedy partisan gerrymandering by allowing for groups of voters to elect their representatives of choice and

simultaneously allow for district boundaries to be drawn consistent with traditional districting principles.

In fact, alternative voting mechanisms may present advantages over drawing new single member districts because any attempt to re-draw single member districts may depart from traditional districting principles. These departures, in turn, invite further challenge under *Shaw*. *Shaw* and its progeny have made clear that there are constitutional constraints on the ability of legislatures to abandon traditional districting principles and, instead, draw district lines based upon the traits of individual voters and groups of voters. Properly used, alternative voting mechanisms are resistant to such challenges whether the challenges are based on allegations of racial or partisan gerrymandering. Multimember districts with alternative voting mechanisms also are fully consistent with the Voting Rights Act.

Because the use of alternative voting mechanisms in multimember districts not only comports with the law, but, post-*Shaw*, offers advantages over the creation of new single member districts, alternative voting mechanisms should be considered as an available remedy that courts and legislatures may use to redress charges of partisan gerrymandering.

ARGUMENT

I. USE OF MULTIMEMBER DISTRICTS WITH ALTERNATIVE VOTING MECHANISMS COULD RESOLVE CLAIMS OF PARTISAN GERRYMANDERING WITHOUT CREATING NEGATIVE IMPLICATIONS UNDER *SHAW v. RENO*

A. Multimember Districts with Alternative Voting Mechanisms Can Help Remove the Discriminatory Effects of a Challenged Districting Plan

The most common manner of remedying a gerrymander is to draw new single member districts that ameliorate the discriminatory effect of the challenged plan. Multimember districts coupled with alternative voting mechanisms, however, also can address such discriminatory effects.

Partisan gerrymandering occurs where there has been "intentional discrimination against an identifiable political group and an actual discriminatory effect on that group." *Davis v. Bandemer*, 478 U.S. 109, 127 (1986). Alternative voting mechanisms can cure discriminatory effects by giving voice to every identifiable political group within a multimember district that has more members than the threshold of exclusion. *See Section I. C, infra.*

According to *Bandemer*, discriminatory effects can take two forms. Such effects can be evidenced either by "continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process." *Id.* at 133. Alternative voting mechanisms avoid both ills. These mechanisms give groups of like-minded voters the ability to elect a number of candidates of their choice that is consistent with the voting

strength of each group regardless of majority or minority status.[6]

Moreover, district lines for these large, multimember districts can be drawn consistent with traditional political boundaries, thereby protecting against the discriminatory intent that often can infect the process when districts cut across traditional lines.

B. Multimember Districts with Alternative Voting Mechanisms Can Remedy Partisan Gerrymandering More Effectively than Single Member Districts

Appellants argue correctly that *Bandemer* must be read in light of the *Shaw v. Reno, 509 U.S. 630 (1993),* line of cases and that, accordingly, districting plans that abandon traditional districting principles and instead focus on the party affiliations of voters violate the Constitution. Petition for Writ of Certiorari at 22-23. In fact, the *Bandemer* decision was based, in part, on the fundamental similarities between political and racial gerrymandering claims. *See Bandemer*, 478 U.S. at 125 ("Justice O'Connor's attempt to distinguish this political gerrymandering claim from the racial gerrymandering claims that we have consistently adjudicated demonstrates the futility of such an effort."), 131 n.12 ("Although these cases involved racial groups, we believe that the principles developed in these cases would apply equally to claims by political groups in individual districts."). The *Shaw* requirement that voter characteristics

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[6] It is important to note that these systems give groups of voters electoral opportunities, but do not guarantee any outcomes. Groups actually must mobilize and vote in order to take advantage of these opportunities and elect their candidates of choice.

not be unduly elevated at the expense of traditional districting principles, however, makes it more difficult to remedy partisan gerrymandering claims. *See Shaw* at 642. As in the race context, any re-drawing of single member districts will have to take party affiliation into account to ensure that discrimination is remedied. But, while it certainly is not unconstitutional to consider party affiliation, re-drawing district lines according to party affiliation risks a new abandonment of traditional districting principles and a new partisan gerrymander.

Multimember districts and alternative voting mechanisms provide a solution to this difficult balancing act. Multimember districts drawn in a partisan-neutral manner in accordance with traditional districting principles do not implicate *Bandemer* – even when read in conjunction with *Shaw*. In fact, alternative voting systems do not make any assumptions about the cohesiveness of groups of voters. They simply provide a mechanism whereby groups that do, in fact, vote as a bloc may elect their preferred candidates.

II. USE OF MULTIMEMBER DISTRICTS WITH ALTERNATIVE VOTING MECHANISMS IS WHOLLY PERMISSIBLE UNDER BOTH SECTION 2 OF THE VOTING RIGHTS ACT AND *SHAW v. RENO*

When fashioning a remedy to a claim of partisan gerrymandering, one must be mindful of the need to comply with both Section 2 of the Voting Rights Act and *Shaw*. Alternative voting mechanisms comply with these requirements and thus may present advantages for districting efforts in the wake of *Shaw*.

A. Alternative Voting Mechanisms Comply with Section 2 of the Voting Rights Act.

1. The *Gingles* Test

Section 2 of the Voting Rights Act prohibits any voting procedure that "results in a denial or abridgement of any citizen of the United States to vote on account of race or color." 42 U.S.C. § 1973. The essence of a Section 2 claim is a charge that an electoral law, practice, or structure will "interact[ ] with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." *Gingles*, 478 U.S. at 47. Proof of a discriminatory motive is unnecessary. Rather, a violation of Section 2 is established by showing that, "based on the totality of the circumstances," members of a protected minority group "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b).[7]

Gingles thus establishes a "results oriented" test for evaluating when and how a State must draw district lines to enhance the voting power of a minority group. At the heart

[7] The Senate Judiciary Report accompanying this provision (as amended in 1982) listed a number of factors that may be used to prove a Voting Rights Act violation, including the history of voting-related discrimination in the state or political subdivision; the extent to which voting is racially polarized; and the extent to which members of the minority group have been elected to public office in that jurisdiction. Judiciary Comm., Voting Rights Act Amendments of 1982, S. Rep. No. 97-417, at 28-29 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 205. These factors are neither comprehensive nor exclusive. *See Gingles*, 478 U.S. at 45.

of *Gingles* is the admonition that politically cohesive minority groups may not have their voting power impermissibly "diluted" by multimember districting or at-large electoral processes that "submerge" the minority group in a constituency in which a "bloc voting majority" usually is able to defeat the minority group's favored candidates. *Gingles*, 478 U.S. at 47-49. Minority vote dilution typically occurs in a single-member districting context when a plan fragments large concentrations of minority populations and disperses them into separate electoral districts ("fracturing" or "cracking") or, conversely, concentrates minorities into districts so that they constitute an excessive "super-majority" and thus deprives the group of voting power in multiple districts ("packing"). *See id.* at 46 n.11.

Under *Gingles*, a Section 2 prima facie case requires proof of three "preconditions:"

> (1) The minority group is large enough and located in a sufficiently geographically compact area to make up a majority in a single member district;
>
> (2) The minority group is politically cohesive; and
>
> (3) There is bloc voting by the white majority such that the minority's preferred candidate usually is defeated.

478 U.S. at 50-51. The first and second *Gingles* factors together establish that a minority group has sufficient potential to elect its representative of choice in a single-member district; the second and third factors together establish that the challenged district(s) thwarts a distinctive minority vote by cracking or packing the minority voting

group, or by submerging it in a larger white voting population. *Growe v. Emison*, 507 U.S. 25, 40-41 (1993) (citing *Gingles*). If all of these preconditions are not satisfied, there has been no wrong, and Section 2 thus requires no remedy.[8] *Id.*

Where the *Gingles* preconditions are satisfied, the remedy typically has been the creation of single-member districts in which a majority of residents are members of the minority group on whose behalf the Section 2 challenge was asserted. The use of single member districts to remedy these problems, however, can create significant practical and constitutional problems. As a practical matter, racial minority populations often are dispersed geographically, making it difficult to create appropriate districts. To overcome this problem, single-member districts run the risk of being drawn with unsightly and uneven district boundaries that are subject to equal protection challenges. *See infra* at II.B (discussing *Shaw* and its progeny). Although single-member districts have been the more common remedy for redressing partisan gerrymandering and minority vote dilution, by no means have they been the exclusive remedy. To the contrary, several jurisdictions have implemented alternative voting mechanisms in multimember districts to remedy alleged voting rights violations.[9]

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[8] Even where all three preconditions are satisfied, a finding that Section 2 has been violated is not automatic. *Johnson v. De Grandy*, 512 U.S. 997, 1011 (1994) (finding no violation of Section 2, despite proof of preconditions, based on the "totality of the circumstances").

[9] *See, e.g., Moore*, 936 F.2d at 164 (approving settlement that included a multimember district with limited voting in North Carolina); *McCoy*, 6 F. Supp. 2d at 985 (adopting cumulative voting as complete and adequate remedy to

2. Alternative Voting Mechanisms Are Fully Permissible Under *Gingles* Because They Enable Cohesive Minority Groups To Elect Their Candidates of Choice.

As discussed above, the central purpose of the *Gingles* test is to evaluate whether a minority community that is unable to elect its preferred candidate(s) under a challenged districting scheme would be able to seat its candidate(s) of choice under an alternative districting scheme. Use of an alternative voting system in a multimember district has the same effect as the creation of a single-member majority-minority district – it allows for the election of the minority group's preferred candidate(s) if the group is sufficiently large and politically cohesive. All three alternative voting mechanisms discussed above – cumulative, limited and preference voting – enable minority groups to secure the election of their preferred candidates, even in the face of racially polarized voting. They do this by effectively fragmenting the voting power of electoral *majorities* – irrespective of race, ethnicity or any characteristic other than pure political preference. For racial minorities, the effect is the same as it would be through the creation of a single-member majority-minority district.

Section 2 violation); *Dillard*, 699 F. Supp. at 876 (approving cumulative voting scheme as Section 2 remedy in Chilton County, Alabama); *Orloski*, 564 F. Supp. at 536 (rejecting Voting Rights Act challenges to limited voting scheme in Pennsylvania); *Lo Frisco*, 341 F. Supp. at 751 (upholding statute calling for limited voting scheme in Connecticut); *Kaelin*, 334 F. Supp. at 609 (upholding limited voting scheme in Pennsylvania).

Cumulative voting accomplishes this result by giving all groups the opportunity to concentrate their votes on a few candidates and secure their election. *See Dillard*, 699 F. Supp. at 875 (cumulative voting "provides black voters [] with a realistic opportunity to elect candidates of their choice, even in the presence of substantial racially polarized voting"). If five seats are open in a district, for example, voters would have five votes each to distribute as they choose. Because the same majority cannot concentrate its votes on all five seats, they cannot dominate the election. Instead, voters in a sufficiently large minority group – more than one-sixth of the electorate in a five-seat race – can assure their candidate's election regardless of how other voters, including a majority, cast their ballots. *See* Pildes & Donoghue, 1995 U. Chi. Legal F. at 254.

Limited voting operates similarly, except that voters have fewer votes to cast than the number of seats to fill. By limiting each voter to, for example, one or two votes in a five-seat election, the same majority group cannot dominate every seat. As under a cumulative voting system, cohesive minority groups that are sufficiently large are empowered to control the outcome of at least one seat. *Id.* Under a preference voting system, the vote-transferring process increases the proportion of voters who vote for a winning candidate. It does this by transferring "wasted" votes – votes that are cast for a candidate who would win without them or who could not win with them – onto the next ranked candidates of a voter's ballot. Preference voting thus enables electoral minorities to control some seats in a multimember race even in the face of extreme majority opposition. In a race for five seats, for example, a candidate with just over one-sixth of the total vote will win a seat. A minority voting bloc of that size is thus sufficient to ensure election of at least one representative of its choice. *Id.*

Evidence from several multimember jurisdictions that have employed such alternative voting mechanisms demonstrates that these systems are in fact useful in enhancing minority representation. In Alabama, for example, nine counties began using limited voting in response to Section 2 challenges to districting plans in the late 1980s.[10] In the first elections following implementation, an African-American candidate won in thirteen of the fourteen municipalities in which an African-American candidate ran for office. Mulroy, 77 N.C. L. Rev. at 1891. The only unsuccessful African-American candidate lost by a single vote. *Id.* In ten of the thirteen Alabama municipalities that employed alternative voting systems, the minority candidates were the first African-Americans ever elected to office in those jurisdictions. *Id.*

The results of elections in Chilton County, Alabama following the settlement achieved in *Dillard* demonstrate the effectiveness of a cumulative voting system. In the first election following the settlement, Chilton County elected its first African-American representative to the County Commission since Reconstruction. *See* Pildes & Donoghue, 1995 U. Chi. Legal F. at 272. In fact, that candidate was the leading vote-getter in the election despite the fact that he received support from only 1.5 percent of white voters. *Id.* This was because he received votes from virtually every African-American voter in the county, many of whom cast multiple votes for him. *Id.* An African-American candidate also was elected to the Board of Education in Chilton County

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[10] These plans were pre-cleared by the U.S. Department of Justice pursuant to Section 5 of the Voting Rights Act. Steven J. Mulroy, *Limited, Cumulative Evidence: Divining Justice Department Positions on Alternative Electoral Schemes*, 84 Nat'l Civic Rev. 66, 67 (Winter 1995); *see infra* section III.

in the first two elections held with cumulative voting in place. *Id.*

Alternative voting systems also can remedy minority vote dilution in situations where a single-member districting scheme might fail, such as where a single-member districting plan would leave some members of the minority group outside the remedial minority district. *See, e.g., Dillard,* 699 F. Supp. at 876 (noting the usefulness of alternative voting systems where minority populations are dispersed). Moreover, because alternative voting mechanisms can be tailored to the size of the minority population within a county (or counties) such that minority groups will be able to elect as many or more candidates of choice as they can under single-member majority-minority districts, such mechanisms in many circumstances do a *better* job of meeting Voting Rights Act goals.

B. Alternative Voting Systems also Satisfy Equal Protection Requirements and Thus Present Clear Advantages for Districting Efforts in the Wake of *Shaw v. Reno.*

As demonstrated above, the use of alternative voting mechanisms in multimember districts enhances the ability of cohesive groups to elect their preferred candidates at the polls. In this regard, they are at least as effective as the creation of single-member majority-minority districts in avoiding retrogression. Because alternative voting mechanisms accomplish this objective in a fashion that is neutral in terms of party and race, however, they also offer clear advantages in terms of compliance with equal protection constraints on the redistricting process. In this case, they offer a solution that navigates the narrow passage between the *Shaw* line of cases and claims of partisan gerrymandering.

In *Shaw*, the U.S. Supreme Court held that the deliberate segregation of voters into districts on the basis of race properly states a claim for "racial gerrymandering" under the Equal Protection Clause of the Fourteenth Amendment.[11] 509 U.S. 630.

A claim of racial gerrymandering, like all laws that classify citizens on the basis of race, is constitutionally suspect and subject to strict judicial scrutiny. *Id.* at 657. To prevail, a plaintiff must demonstrate that race is the "predominant" consideration in drawing district lines such that "the legislature subordinated traditional race-neutral districting principles . . . to racial considerations." *Miller v. Johnson*, 515 U.S. 900, 916 (1995). Once a plaintiff proves that race predominates, the burden shifts to the defendant to show that its use of race in districting was "narrowly tailored to achieve [a] compelling state interest;" if this burden cannot be satisfied, the plan cannot be upheld. *Id.* at 920. This narrowly limits the ability of states to take race into account, and avoid retrogression, by drawing single member districts because such a plan would "not be narrowly tailored to the goal of avoiding retrogression if the State went beyond what was reasonably necessary to avoid retrogression." *Shaw*, 509 U.S. at 655.

Since 1993, courts have invoked *Shaw* to invalidate majority-minority districting plans in a number of States on

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[11] The Equal Protection Clause of the Fourteenth Amendment provides that "[n]o state shall ... deny to any person with in its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. Its central purpose is to prevent the States from intentionally discriminating against individuals on the basis of race. *Washington v. Davis*, 426 U.S. 229, 239 (1976).

the grounds that race was the predominant factor motivating the shape and size of the district. *See, e.g., Miller*, 515 U.S. at 915-917 (invalidating Georgia legislative district because race was predominant factor motivating boundary lines); *Shaw v. Hunt*, 517 U.S. 899, 906 (1996) (invalidating North Carolina districting plan because race was predominant factor used to draw majority-minority district); *Bush v. Vera*, 517 U.S. 952, 955-57 (1996) (invalidating Texas legislative redistricting plan that demonstrated "substantial disregard for the traditional districting principles" in favor of establishing majority-minority districts based on race). *Shaw* and its progeny thus severely restrict a State's ability to draw districts that enhance minority representation because, if race is too central to a district's boundary determination and there is no compelling justification for using race as a proxy, then the district violates the equal protection requirement.

Factors including unusually-shaped or unnatural district boundaries that "pack" minority populations into a small number of districts and the use of narrow land bridges to "grab" otherwise separate minority populations influence the determination of whether race impermissibly was the predominant factor in a districting scheme. *Miller*, 515 U.S. at 917; A. 2827. Unlike single-member majority-minority districts, multimember districts that are drawn in a race-neutral manner in accordance with traditional districting principles by definition do not implicate *Shaw*.

Alternative electoral systems, moreover, avoid the pernicious assumption that the *Shaw* line of cases rejects as "odious to a free people whose institutions are founded upon the doctrine of equality," 509 U.S. at 643 (*citing Hirabayashi v. United States*, 320 U.S. 81, 100 (1943)) – that voting behavior can be predicted based solely on skin color. At the heart of the Court's objection in *Shaw* was the notion that members of the same racial group – regardless of their

age, education, status, or community – think alike, share the same political views, and will prefer the same candidates at the polls. *Shaw*, 509 U.S. at 647; *see also Gingles*, 478 U.S. at 46 (a court may not presume bloc voting within a minority group). *Cf. Holland v. Illinois*, 493 U.S. 474, 484 n. 2 (1990) (finding assumption that black juror will be partial to black defendant based on skin color to be unconstitutional racial stereotype). Alternative voting systems do not assume voting behavior for any group, minority or otherwise. Instead, they simply provide a mechanism for groups voting as a bloc – *i.e.*, groups that demonstrate electorally that they *do share* the same political views and prefer the same candidates at the polls – to ensure the election of their preferred candidates.[12]

By the same token, alternative voting systems avoid the "representational" harm caused when a district is created solely to effectuate the perceived common interests of one racial group. *See* Steven J. Mulroy, *The Way Out: A Legal Standard for Imposing Alternative Electoral Systems as Voting Rights Remedies*, 33 Harv. C.R.-C.L. L. Rev. 333, 352 (Summer 1998). Because alternative voting mechanisms treat voters of all races alike, they do not "stigmatize individuals by reason of their [race]," and because they do not create "safe" districts for minorities, incumbents are discouraged from believing that "their

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[12] *See also* Brischetto & Engstrom, 78 Soc. Sci. Q. at 989 ("Cumulative voting can provide minority electoral opportunities while avoiding what the Supreme Court views as objectionable features of some single-member districting schemes – the 'segregation' of voters into racially identifiable election units . . . .Dilution can be combated, therefore, while retaining an incentive for coalition building across a jurisdiction based on interests that are not necessarily defined by race . . . .").

primary obligation is to represent only the members of [a racial] group, rather than their constituency as a whole." *United States v. Hays*, 515 U.S. 737, 744 (1995) (*citing Shaw*, 509 U.S. at 643). *See also* Mulroy, 33 Harv. C.R.-C.L. L. Rev. at 352.

Because alternative voting systems do not employ racial classifications in any manner, districting plans that use them are not subject to strict scrutiny under *Shaw* and its progeny. This conclusion applies with equal force even if alternative voting mechanisms are employed for the purpose of facilitating minority representation. It is the classification of individuals on the basis of race, not the mere motivation to facilitate equal opportunity for representatives of all races, that requires heightened scrutiny. *See Shaw*, 509 U.S. at 653; *see also Vera*, 517 U.S. at 993 (Section 2 "must be reconciled with the complementary commitment of our Fourteenth Amendment jurisprudence to eliminate unjustified use of racial stereotypes") (O'Connor, J., concurring).

III. MULTIMEMBER DISTRICTS THAT EMPLOY ALTERNATIVE VOTING MECHANISMS EXPAND ELECTORAL OPPORTUNITY AND THUS QUALIFY FOR PRECLEARANCE UNDER SECTION 5

"Section 5 of the Voting Rights Act authorizes preclearance of a proposed voting change that 'does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.'" *Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 354 (2000) (*"Bossier Parish II"*) (*quoting* 42 U.S.C. § 1973c). The key question under Section 5 is "'whether the ability of minority groups to participate in the political process and to elect their choices to office is augmented, diminished, or not affected

by the change affecting voting . . . .'" *Beer v. United States*, 425 U.S. 130, 141 (1976) (*quoting* H.R. Rep. No. 94-196, p. 60). "In other words the purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer*, 425 U.S. at 141; *see also Bossier Parish II*, 528 U.S. at 329 (holding that retrogression is the focus of the analysis under both the "purpose" and "effect" components of the Section 5 inquiry).

The use of properly constructed alternative voting mechanisms in multimember districts satisfies the Section 5 non-retrogression requirement because, as discussed at length above, such mechanisms expand the "effective exercise of the electoral franchise" for all voters. Indeed, although traditional at-large electoral schemes disable minority groups from electing candidates of their choice by submerging them in larger multimember districts, the use of alternative voting mechanisms cures any such vote dilution by enabling cohesive minority groups to elect the candidates of their choice. *See supra* at II.A.2. And, as the Supreme Court only recently reiterated, "'[i]t is [ ] apparent that a legislative reapportionment that enhances the position of racial minorities with respect to their effective exercise of the electoral franchise can hardly have the 'effect' of diluting or abridging the right to vote on account of race within the meaning of § 5.'" *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 478 (1997) (*"Bossier Parish I"*) (*quoting Beer*, 425 U.S. at 141).

In addition, because the fundamental objective of the use of alternative voting mechanisms is to allow any sufficiently large and cohesive voting bloc to elect candidates of choice, the ability of such a group to elect candidates of choice should correspond closely to the relative voting strength of

that group, if the alternative voting mechanisms are properly constructed. As the Supreme Court made clear in *Richmond v. United States*, 422 U.S. 358 (1975), voting changes such as this that will "'fairly reflect[] the strength of the [minority] community'" cannot be said to violate Section 5. *Bossier Parish II*, 528 U.S. at 330 (*quoting Richmond*, 422 U.S. at 371).[13]

DOJ's prior administrative preclearance efforts demonstrate that multimember districting plans that employ alternative voting mechanisms qualify for preclearance under Section 5. Since 1985, for example, at least 52 jurisdictions have submitted electoral plans incorporating alternative voting mechanisms to DOJ for preclearance. Of these, 47 received final determinations from DOJ and, in all but one of these submissions, preclearance was granted. Steven J. Mulroy, *Limited, Cumulative Evidence: Divining Justice Department Positions on Alternative Electoral Schemes*, 84 Nat'l Civic Rev. 66, 67 (1995). All 29 of the submissions that employed limited voting in at-large districts were precleared, including the voting plan adopted by several Alabama municipalities in a settlement of a vote dilution claim, and that settlement was upheld in *Dillard v. Baldwin County Bd. of Education*, 686 F. Supp. 1459 (M.D. Ala.

[13] *Richmond* "involved requested preclearance for a proposed annexation that would have reduced the black population of the city of Richmond, Virginia from 52% to 42%." *Bossier Parish II*, 528 U.S. at 330. The *Richmond* Court found that if the City's pre-existing multimember at-large voting scheme for the nine-person city council were replaced by a voting system that "fairly reflects the strength of the Negro community as it exists after the annexation," such an annexation cannot be found to be barred by Section 5. *Richmond*, 422 U.S. at 371.

1988). *See* Mulroy, 84 Nat'l Civic Rev. at 67. In addition, cumulative voting plans were precleared in all but one of the 18 submissions that proposed their use in multimember districts.[14] *Id.* Significantly, several of the Section 5 submissions that utilized alternative voting mechanisms involved districts in which it would have been possible to draw single-member minority-majority districts to enhance minority electoral opportunities. *Id.* at 67. DOJ also has entered into consent decrees under which limited voting mechanisms were adopted. *See id.* at 69 (discussing litigation settlements to which DOJ consented involving multimember districts with limited voting systems for elections in North Carolina and Georgia).

There thus appears to be no question that multimember districting plans that employ properly constructed alternative voting mechanisms warrant preclearance under Section 5.

[14] Even in the one cumulative voting submission to which DOJ initially objected, the Department ultimately precleared a revised cumulative voting plan for the jurisdiction in question. *Id.* at 68. The initial objection was based on evidence that the city council had failed to investigate whether the minority community understood the cumulative voting system or would require bilingual education regarding the new system.

CONCLUSION

For the foregoing reasons, the DKT Liberty Project urges this Court to recognize the role that multimember districts with alternative voting mechanisms can play in remedying claims of partisan gerrymandering as well as other unconstitutional redistricting practices.

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RICHARD VIETH, *et al.*,
Appellants,

v.

ROBERT C. JUBELIRER, *et al.*,
Appellees.

On Appeal from the United States District Court for the Middle District of Pennsylvania

Brief of *Amici Curiae* Texas House Democratic Caucus and U.S. Representatives John Lewis, Chris Bell, Martin Frost, Sheila Jackson Lee, and Nick Lampson in Support of Appellants

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Interest of Amici Curiae

The Texas House Democratic Caucus is composed of the 61 Democratic members of the Texas House of Representatives. The Caucus has a direct interest in the constitutional standards governing redistricting because its members participate in the process of redrawing congressional and state legislative district boundaries. See Tex. Const. Art. III, § 28 (state legislative reapportionment); *Perry v. Del Rio*, 66 S.W.3d 239, 242-43 (Tex. 2001) (recognizing congressional redistricting as primarily a legislative matter). *Amici* Representatives Chris Bell, Martin Frost, Sheila Jackson Lee, and Nick Lampson are Members of Congress representing Texas's Twenty-Fifth, Fourth, Eighteenth, and Ninth Congressional Districts, respectively. This past year, Texas has experienced an unprecedented attempt to re-engineer congressional district boundaries that illustrates the need for this Court to clarify constitutional constraints on partisan redistricting.

Representative John Lewis represents Georgia's Fifth Congressional District in the United States House of Representatives. In its recent decision in *Georgia v. Ashcroft*, 123 S. Ct. 2498, 2516-17 (2003), this Court relied on Representative Lewis's testimony and his expertise in assessing the political consequences of redistricting in considering the fairness of Georgia's post-2000 redistricting.[1]

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[1] The parties have consented to the filing of this brief. Their letters of consent have been filed with the Clerk of this Court. Pursuant to this Court's Rule 37.6, *amici* state that none of the parties authored this brief in whole or in part and no one other than *amici* or counsel contributed money or services to the preparation and submission of this brief.

Summary of Argument

Since this Court's decision in *Davis v. Bandemer*, 478 U.S. 109 (1986), redistricting has changed in ways that call for more searching review of political gerrymandering claims and that militate in favor of adopting a standard of review that looks more closely at factors such as the process that produced the challenged plan and the shape of the challenged districts.

First, the increased sophistication of redistricting tools means that there is far less reason today to "think that political gerrymandering is a self-limiting enterprise," *Bandemer*, 478 U.S. at 153 (O'Connor, J., concurring in the judgment). While there is still a risk-reward tradeoff, plan drawers are far more able to calibrate the tradeoff than they were in 1986. Technological changes have enabled far more aggressive pursuit of partisan ends than was possible twenty years ago. Current geographic information systems software can be used along with census data and political data to craft plans that cement electoral results into place.

Second, changes in political tactics call for more searching judicial review than *Davis v. Bandemer* contemplated. In particular, they show why this Court must abandon a test of discriminatory effect that depends on evidence from a series of elections. Prior to the post-2000 round of redistricting, no state redrew its districts a second time in a decade, unless under court order. But *amici*'s recent experience in Texas, along with mid-cycle redistrictings in Colorado and South Carolina, as well as impending threats of redistricting in other states, show that over the past forty years, the threat to representative democracy has changed from states *never* redistricting into states redistricting *continually* to dampen any political competition that was not squelched the first time around. In such a world, the procedures by which the challenged redistricting was accomplished become especially relevant. And the tacit green light that *Bandemer*

gave to partisanship has fueled an increasingly bare-knuckled and irregular process.

Third, this Court's decision in *Shaw v. Reno*, 509 U.S. 630 (1993), and its progeny militate in favor of more searching review of political gerrymandering claims. *Shaw* recognized that district shape offers a meaningful constraint on an otherwise potentially pernicious process that fails to balance the myriad factors that inform redistricting decisions. More broadly, the fact that the difficulties of proof are so different in *Shaw* cases and political gerrymandering cases creates an incentive for disappointed political factions to dress their claims up in racial terms. As Justice Stevens observed in his concurrence in the judgment in *City of Mobile v. Bolden*, 446 U.S. 55, 88-89 (1980), "surely there is no national interest in creating an incentive to define political groups by racial characteristics." That is what the current standards do. Bbecause it may often be difficult for courts to disentangle partisan and racial motivations, this Court should realign the standards for proving unconstitutionally excessive uses of partisan and racial considerations.

The experience of the *Shaw* cases not only provides a strong reason for rethinking the framework for assessing claims of unconstitutional political gerrymandering; it also suggests the contours of a more appropriate standard. A "predominant" factor test based on factors such as the nature of the legislative process that produced the challenged redistricting or a disregard of traditional districting principles – the sort of test proposed by Justice Stevens in *Bolden*, championed by Justice Powell in *Bandemer*, and applied to claims involving the excessive use of race in the *Shaw* cases – is as judicially manageable as the "consistent degradation" standard articulated by the *Bandemer* plurality. Moreover, the significant decline in *Shaw* claims following the 2000 round of redistricting suggests that articulating a more meaningful constraint on the permissible

degree of partisanship will not significantly expand judicial involvement in the political process.

Argument

I. Since this Court's Decision in *Davis v. Bandemer*, Redistricting Has Changed in Ways That Call For More Searching Review of Political Gerrymandering Claims

To show that a political gerrymander violates the equal protection clause, a plaintiff must show both a discriminatory purpose and a discriminatory effect. *Davis v. Bandemer*, 478 U.S. 109, 127 (1986) (opinion of White, J.). Seventeen years' experience with *Bandemer* have revealed that its framework for considering intent is so toothless that it ignores critical evidence of impermissible partisanship while its test for proving effect is so stringent that with respect to legislative redistricting it has never yet been satisfied. See Samuel Issacharoff, Pamela S. Karlan & Richard H. Pildes, The Law of Democracy: Legal Structure of the Political Process 886 (rev. 2d ed. 2002) ("*Bandemer* has served almost exclusively as an invitation to litigation without much prospect of redress"); Daniel Hays Lowenstein & Richard L. Hasen, Election Law 197 (2d ed. 2001) (pointing to the complete lack of success in lawsuits based on *Bandemer*).

The result has been exactly what Justice Powell predicted: *Bandemer* signaled a "'constitutional green light' to would-be gerrymanderers." *Bandemer*, 478 U.S. at 173 (Powell, J., joined by Stevens, J., concurring in part and dissenting in part). Moreover, developments in the technology, law, and politics of redistricting since 1986 have made the problem of excessive partisanship even more acute.

A. Technological Changes Have Enabled More Aggressive Pursuit of Partisan Ends

Over the past forty years, this Court has used the equal protection clause to police redistricting in order to ensure "fair and effective representation for all citizens." *Reynolds v. Sims*, 377 U.S. 533, 565 (1964). Its first use of the clause imposed the requirement of one-person, one-vote. Chief Justice Earl Warren called *Reynolds* his most important opinion "because it insured that henceforth elections would reflect the collective public interest . . . rather than the machinations of special interests." G. Edward White, Earl Warren: A Public Life 337 (1977). But as Justice Harlan soon observed,

> The fact of the matter is that the rule of absolute equality is perfectly compatible with "gerrymandering" of the worst sort. A computer may grind out district lines which can totally frustrate the popular will on an overwhelming number of critical issues. The legislature must do more than satisfy one man, one vote; it must create a structure which will in fact as well as theory be responsive to the sentiments of the community.

Wells v. Rockefeller, 349 U.S. 542, 551 (1969) (Harlan, J., dissenting). But even Justice Harlan could not have foreseen the amazing advances in computational power that enable plan drawers today to accomplish feats their predecessors could not have imagined. Current geographic information systems (GIS) software can be used along with census data and political data (such as precinct-level election returns and voter-registration data) to predict with a fair degree of precision the political consequences of particular districting schemes. Plan drawers can "recompile" election returns to see how candidates would

have fared in redrawn districts.[2] Indeed, one of the leading software packages on the market, Maptitude, allows users to automatically generate "all the feasible alternatives" that satisfy a user's constraints on population deviation, racial composition, incumbency protection, and political competitiveness, and then to "[f]ine-tune your most promising plans using the traditional manual selection tools."[3]

This Court first confronted the effects of more finely grained census data and more overwhelming computational power in its *Shaw* cases, and it did not like what it saw: highly irregular, multi-sided districts drawn for the purpose of promoting the electoral fortunes of certain groups while relegating others to the status of "filler people." But it is critical to remember that such districts were the product of political as well as racial considerations. See *Bush v. Vera*, 517 U.S. 952, 1019 & n.18 (1996) (Stevens, J., dissenting) (describing the contours of the majority-Anglo, heavily Republican Sixth Congressional District).

Moreover, the increased sophistication of redistricting tools means that there is far less reason today to "think that political gerrymandering is a self-limiting enterprise," *Bandemer*, 478 U.S. at 153 (O'Connor, J., concurring in the judgment). While there is still a risk-reward tradeoff, plan drawers are far more able to calibrate the tradeoff than they were in 1986. As one district court judge recently faced with a political

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[2] For a relatively accessible discussion of the new technology, see Lisa Handley, A Guide to 2000 Redistricting Tools and Technology in The Real Y2K Problem: Census 2000 Data and Redistricting Technology 27 (Nathaniel Persily ed. 2000).

[3] See www.caliper.com/Redistricting/autodistrict.htm.

gerrymandering case observed:

> Floridians should be proud, perhaps, of the innovative FREDS [Florida Redistricting] software and the technical proficiency with which it has been applied, but not of the degree of political gerrymandering that drove these plans. Floridians should perhaps be proud, instead, when an apportionment plan is adopted in an effort to be fair to all, rather than in an effort to optimize the outcome for one party or the other.
>
> Political gerrymandering is as old as the republican form of government.... Still, the issue has recently taken on a different dimension; the "sea change" of advancing technology, as one witness described it, has substantially increased the extent of successful political gerrymandering that is achievable, as a few minutes online with FREDS will confirm.

Martinez v. Bush, 234 F. Supp. 2d 1275, 1351-52 (S.D. Fla. 2002) (three-judge court) (Hinkle, J., concurring).

B. Changes in Political Tactics Call For More Searching Judicial Review than *Davis v. Bandemer* Provides

Justice White's decision in *Bandemer* downplayed the relevance of factors such as "the nature of the legislative procedures by which the challenged redistricting was accomplished" or "the shapes of the districts and their conformity with political subdivision boundaries," *Bandemer*, 478 U.S. at 138 (opinion of White, J.), in favor of considering whether "the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole," *id.* at 132.

In answering this question, Justice White rejected the idea of "[r]elying on a single election to prove unconstitutional discrimination." *Id.* at 135. Without a finding that the challenged reapportionment "would consign the Democrats to a minority status . . . throughout the 1980"s," *id.*, a court simply could not find the requisite discriminatory effect.

But a striking change in redistricting tactics explains why this Court must abandon a test of constitutionality that depends on evidence from a series of elections. In the past 50 years, no state has redrawn its districts a second time in a decade, unless under court order, according to the Congressional Research Service.[4] But that is changing. As recent experiences in Texas and Colorado demonstrate, states are poised to move from the pre-*Reynolds v. Sims* world in which they *never* redistricted into a world in which redistricting occurs *continually*. In such a world, the "nature of the procedures by which the challenged redistricting is accomplished" become especially relevant.

1. The Texas Experience

The Texas Constitution provides that the State Legislature "shall, at its first regular session after the publication of each United States decennial census, apportion the state into senatorial and representative districts." Tex. Const. Art. III, § 28. Although the Constitution does not explicitly address congressional districts, the Legislature's consistent practice has been to address congressional districting in a similar manner.

Following the 2000 census, Texas was allotted two

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[4] Allison Stevens, DeLay Has His Eye on Tex. Map, The Hill, Feb. 5, 2003 (www.hillnews.com/news/020503/delay.aspx).

additional seats in the House of Representatives. This fact, and population shifts within the state, required redrawing the state's congressional districts.

During the regular 2001 session of the Texas Legislature, the legislature was unable to agree upon a congressional redistricting plan. As a result, after deferring its proceedings in order to enable the state courts to address the issue, a three-judge federal district court, with Judge Patrick Higginbotham presiding, redrew Texas's congressional districts. *Balderas v. Texas*, No. 6:01Civ158 (E.D. Tex. Nov. 14, 2001), *summarily aff'd*, 536 U.S. 919 (2002).[5] In crafting the new map, the district court began by "dr[awing] in the existing Voting-Rights-Act-protected majority-minority districts." Slip op. at 5. It then located the two new seats in the areas of greatest population growth, following both prevailing social scientific views and Texas Legislature's own prior practice. See *id.* at 6. "With a large part of the Texas map thus drawn," *id.*, the court then looked to the location of prior political boundaries, emphasizing compactness and contiguity, and "struggl[ing] to follow local political boundaries," *id.* at 7. As a result, the court eliminated some of the most "patently irrational shapes" of previous districts.[6] Finally, the court considered whether the plan "was avoidably detrimental to Members of Congress of either party holding unique, major leadership positions," *id.* at 8 – it was not – and determined that the "general partisan" effect of the plan was "likely to produce a congressional delegation roughly proportional to the party voting breakdown across the state," *id.* at 9. The judgment made the plan effective

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[5] The district court's unpublished opinion is available at http://gis1.tlc.state.tx.us/static/pdf/opinion.pdf.

[6] Including the seat ridiculed by Justice Stevens in his dissent in *Bush v. Vera*, 517 U.S. at 1019 n.18.

until release of the next federal decennial census in 2011. The state did not appeal the judgment.

The 2002 congressional elections, the first held under the new plan, produced a Texas congressional delegation with seventeen Democrats and fifteen Republicans. Five of the Democratic candidates were elected from districts that voted for Republicans in statewide elections.

As a result of the 2001 state legislative redistricting (which was carried out by the Republican-controlled Legislative Redistricting Board, after the Legislature failed to produce a plan), Republicans gained control of both the Texas House and Texas Senate. The newly dominant Republicans, spurred on by Representative Tom Delay, decided to redraw the state's congressional districts, solely for the purpose of seizing between five and seven seats from Democratic incumbents. (There was, of course, no legal, as opposed to political, imperative for changing the district boundaries.)

The Republicans' attempt to ram through a new congressional map produced an unprecedented level of hostility and procedural wrangling within the Legislature. During the regular legislative session, Democrats were forced to break the quorum to prevent the bill from passing. When the Republican Speaker of the House and Governor asked state law enforcement officials to physically compel them to return, the lawmakers left the state and traveled to Oklahoma. Republican officials then took the outrageous step of asking for federal assistance from the Department of Homeland Security, the Department of Transportation, and the Department of Justice.[7]

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[7] In the subsequent investigation, the Acting Attorney General in charge of the Justice Department's Office of Legal Counsel told the Office of the Inspector General that he

U.S. Dept of Justice, Office of the Inspector General, An Investigation of the Department of Justice's Actions in Connection with the Search for Absent Texas Legislators (Aug. 12, 2003) (www.usdoj.gov/oig/special/03-08a/final.pdf).

Subsequently, the Governor has called two special sessions in an attempt to force through a new plan. The first session never voted on congressional redistricting because of the longstanding requirement that two-thirds of the senators agree to bring a measure to the floor.[8] So the Governor announced his intention to call yet another special session and the Republican Lieutenant Governor announced the that he would not honor the two-thirds rule. The House and Senate unexpectedly adjourned the first special session a day early, whereupon the Governor called a special session to begin *five*

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considered the requests to be "wacko." U.S. Dept of Justice, Office of the Inspector General, An Investigation of the Department of Justice's Actions in Connection with the Search for Absent Texas Legislators at 5 (Aug. 12, 2003).

[8] The Senate employs a practice known as the "blocker bill." A piece of non-controversial legislation is placed first on the Senate's formal legislative agenda each session. Senate rules require bills on second reading to be considered in their "regular order of business," in the order that the bills come out of the committee. Tex. Sen. Rule 5.12. It takes the vote of two-thirds of the members present to suspend any rule, including the rule establishing the regular order of business Tex. Sen. Rule 5.13; 16.06(6); 22.01. With the "blocker bill" in place, no other bill introduced in the Senate during that session can be moved ahead of that bill for consideration without the vote of two-thirds of the senators present. Twelve of the thirty-one senators were unwilling to have the redistricting bill moved ahead of the blocker bill.

minutes later. In order to avoid being steam rolled, eleven Democratic senators immediately left the state for New Mexico.

The Governor has indicated he will continue calling special sessions until the Republican redistricting plan is enacted. Meanwhile, he and the Lieutenant Governor filed a mandamus action against the absent legislators, seeking a judicial order that they return. That request for mandamus was denied by the Texas Supreme Court. *In re Rick Perry et al.*, No. 03-0726 (Tex. S. Ct. Aug. 11, 2003) (www.supreme.courts.state.tx.us/Advisory/Advisory%202003-08-11.html). And Republican legislators have undertaken an unprecedented campaign to punish their Democratic colleagues, voting to fine them up to $5,000 per day, and to revoke privileges for their staffs. In a rare show of petty spite, they have even forbid absent legislators from obtaining flags that have flown over the capitol to give to bereaved constituents. See Gromer Jeffers, Jr., Runaway Democrats Expand Lawsuit; Dewhurst Aide Says Maneuver an Attempt to Stall Redistricting, Dallas Morning News, Aug. 21, 2003, at 3A.

2. The Colorado Experience[9]

Following the 2000 census, Colorado received a seventh congressional seat. The General Assembly failed to agree on a new plan. As this Court had "specifically encouraged" in

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[9] In addition to the sources cited in the text, the facts in the following discussion are taken from T.R. Reid, GOP Redistricting: New Boundaries of Politics?, Wash. Post, July 2, 2003, at A4; A Dirty Deed Beneath the Dome, Denver Post, May 6, 2003, at B6; John J. Sanko, Redistricting Passes; Senate GOP Votes 18-0 for New Map After Dems Walk Out, Rocky Mountain News, May 8, 2003, at 4A.

Growe v. Emison 507 U.S. 25, 33 (1993); see also *Scott v. Germano*, 381 U.S. 407, 409 (1965) (per curiam), the state judiciary stepped in. After a full hearing at which numerous groups of citizens and legislators presented their views, a state district court drew a plan that adhered to the following criteria: equal population among districts, avoidance of minority vote dilution, "compactness and contiguity, preservation of county and municipal boundaries whenever possible, and preservation of community of interest." *Avalos v. Davidson*, No. 01 Civ 2897, slip op. at 3 (Denver Dist. Ct. Jan. 25, 2002)[10] The state court did not consider either partisan effects or incumbent protection in drawing its plan. See *id.* at 4. Still, in fashioning the new congressional district, the state court remarked that the district should be "competitive" in order to encourage voter interest. *Id.* at 9.

The 2000 elections produced a new Republican majority in the Colorado state senate, giving Republicans control over both the legislative and executive branches. For the first time in Colorado history – Colorado had used court-generated plans for entire decades previously – the General Assembly redrew the borders of the state's congressional districts mid-cycle solely to strengthen the Republicans' hold on what would otherwise have been competitive seats.

The president of the state senate, John Andrews, was candid about this entirely partisan goal. Referring to the two districts that had experienced close races, he wrote: "[t]he Democrats' failure to win either seat in 2002 was small comfort. The numbers were going to favor them in time. America is better served by Congress as it is. To help keep it that way, we set our sights on correcting . . . [the state court's]

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[10] The state court's unpublished opinion is available at www.state.co.us/gov_dir/reap/Data/REAP-01CV2897.pdf

map." John Andrews, Districts Remapped in Public Interest, Rocky Mountain News, June 9, 2003, at 30A.

In contrast to the state court proceedings, which had given a variety of interested parties a full opportunity to offer proposals and comment on potential plans, the new redistricting bill was introduced on a Monday (and assigned to the Senate Committee on Veterans and Military Affairs), passed on a Wednesday and signed into law the same Friday under streamlined rules with little debate and no opportunity for public participation.

The new plan took the Seventh Congressional District, which had experienced the most competitive race in the nation in 2002 – in a contest for an open seat, Republican Bob Beauprez had defeated Democrat Mike Feeley by 122 votes out of 162,938 cast – and transformed it into a safe Republican seat, by giving Republicans an overwhelming 141,854 to 113,876 edge among registered voters. It also moved Feeley's home out of the district. In a similar vein, under the pre-existing plan, voter registration in the Third Congressional District was 33 percent Democratic, 34 percent Republican, and 34 percent unaffiliated. The mid-cycle plan gave Republicans a substantial 159,889- 139,122 advantage.

Needless to say, Colorado's redistricting is back in the courts. See Petition in *People ex rel. Salazar v. Davidson* (Colo. S. Ct. May 14, 2003).[11]

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[11] Available at www.state.co.us/gov_dir/REAP/Congressional/Salazar_v_Davidson.pdf).

3. The Risk of Further Mid-Cycle Redistricting

Colorado and Texas may be only the opening wedge in a process of escalating and retaliatory redistricting. Precisely because Congress is a "national body representing the interests of a single people," *U.S. Term Limits v. Thornton*, 514 U.S. 779, 822 (1995), we can expect that if Republicans act to increase the Republican majority in the U.S. House of Representatives by rejiggering the lines in states that they control, Democrats will respond by redrawing lines in states where they are in power. Recent press accounts suggest that several states are contemplating undertaking mid-cycle redistricting. See, e.g., Juliet Eilperin, Deciding Where to Draw the Lines, Wash. Post, Aug. 20, 2003, at A6 (reporting that Ohio Republicans are considering whether to introduce legislation to redraw districts in the northeastern part of the state to undercut the political base of several incumbent Democratic Representatives); Josh Kurtz, Richardson Rides to the Rescue; May Tackle Redistricting in New Mexico if Texas Changes Boundaries, Roll Call, June 23, 2003 (reporting that Democrats in New Mexico and Oklahoma are considering redrawing their congressional district boundaries if Texas redraws its lines).

4. Other Recent Examples of Excessive Partisanship

Excessive partisanship has tainted redistricting on the local level as well. One particularly striking example, which also illustrates how courts strain to address constitutionally suspect conduct through other doctrinal tools because the *Davis v. Bandemer* test has proved insufficient involves the post-2000 redistricting of the Madison County, Illinois, County Board.

According to the federal district court that adjudicated a

challenge to the 2001 plan, the Madison County process "demonstrated the worst of politics. The process fell so far short of representing the electorate that it seems the citizens of Madison County were not so much as an afterthought. . . . Far from some semblance of bipartisanship, the reapportionment process in Madison County was characterized by threats, coercion, bullying, and a skewed view of the law." *Hulme v. Madison County*, 188 F. Supp. 2d. 1041, 1044 (S.D. Ill. 2001). Among the more egregious examples the court described were the following: at an early committee meeting, Democrat Wayne Bridgewater, the chair of the redistricting committee, announced that he planned to "cannibalize" Republican districts. *Id.* at 1049. At another meeting, when a Republican member of the Board approached him to express objections to the proposed plan, Bridgewater declared, "We are going to shove it [the map] up your f------ ass and you are going to like it, and I'll f— any Republican I can." *Id.* at 1051. And at the final meeting where the Board approved Bridgewater's plan, he tore up a Republican proposed map. *Id.* The plan the Board adopted split substantially more precincts than alternative plans, took a township that could have supported two whole districts and divided it among three districts diluting its influence, and paired two Republican incumbents. See *id.* at 1051.

Ultimately, despite the fact that the plan's total deviation of 9.3 percent placed it within the safe harbor of this Court's decisions in *Brown v. Thomson*, 462 U.S. 835, 842-43 (1983); *White v. Regester*, 412 U.S. 755 (1973) – which had held that deviations of less than ten percent create a presumption that the challenged plan was an "honest and good faith effort" to construct equipopulous districts, *Reynolds*, 377 U.S. at 577 – the district court held that the plan violated one-person, one-vote because "the apportionment process had a 'taint of arbitrariness or discrimination.'" *Hulme*, 188 F. Supp. 2d at 1086 (quoting *Daly v. Hunt*, 93 F.3d 1212, 1220 (4th Cir. 1996) (quoting *Roman v. Sincock*, 377 U.S. 695, 710 (1964))). In

short, although the vices of the process that had produced the plan had relatively little to do with the size of the population deviation – after all, the alternative plan to which the district court pointed had a deviation of 8.51 percent, rather than 9.3 percent, *Hulme*, 188 F. Supp. 2d at 1050 – and much to do with excessive partisanship, the district court used the doctrinal tool at hand to strike down the product of a deeply disturbing process.[12]

C. The *Shaw* Cases Justify More Searching Review of Partisan Gerrymanders

In *Shaw v. Reno*, 509 U.S. 630, 647 (1993), this Court observed that "reapportionment is one area in which appearances do matter." This was not because compactness, contiguity, respect for political subdivisions, or geographic regularity are constitutionally required – as the Court noted, "they are not," *id.* – but because they are reasonably objective

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[12]For another recent example of excessive partisanship, consider the events surrounding the Virginia state legislative apportionment. Edmund A. Matricardi III, the executive director of the Virginia Republican Party, pleaded guilty to a federal felony and Gary Thomson, the Party Chairman, and Claudia Tucker, the chief of staff to the Republican then-Speaker of the House of Delegates, pleaded guilty to federal misdemeanors connected to Matricardi's illegally listening in on a telephone conference call among Democratic Party leaders and their lawyers concerning litigation strategy in a challenge to the Republican-driven state legislative reapportionment. See R.H. Melton, GOP Chairman Guilty In Va. Eavesdrop Case; Chief Admits Role in Snooping on Democrats, Wash. Post, Aug. 13, 2003, at B5; R.H. Melton, Va. GOP's Ex-Chief Fined in Scandal, Wash. Post, July 9, 2003, at B6.

factors that constrain an otherwise potentially pernicious process. While this Court's decisions make clear that race can be *a* factor in the decision about where to draw district lines, see, e.g., *Easley v. Cromartie*, 532 U.S. 234, 253 (2001); *Miller v. Johnson*, 515 U.S. 900, 915 (1995), they provide that race cannot play too predominant a role. "When a district obviously is created solely to effectuate the perceived common interests of one racial group, elected officials are more likely to believe that their primary obligation is to represent only the members of that group, rather than their constituency as a whole. This is altogether antithetical to our system of representative democracy." *Shaw*, 509 U.S. at 648.

Bandemer suggests how a similar danger might exist in overly aggressive partisan gerrymanders. The Court was unwilling to assume that a representative "will entirely ignore" the interests of a cognizable group of voters, "even in a safe district where the losing group loses election after election." *Bandemer*, 478 U.S. at 132. That is no doubt true for many districts. But at some point, a highly irregular and explicitly partisan process or the inability to explain the boundaries of a district as reflecting anything other than an attempt to achieve political advantage will surely send a message to the representative that he or she need *not* represent members of the losing faction.

More broadly, the fact that the burden of proof in a political gerrymandering case brought under *Bandemer* is so much heavier than the burden faced by a plaintiff in a racial vote dilution claim under amended section 2 of the Voting Rights Act, 42 U.S.C. § 1973, see, e.g., *Thornburg v. Gingles*, 478 U.S. 30 (1986) (decided the same day as *Bandemer*), or a racial gerrymandering claim brought under *Shaw* has had pernicious effects on the political process. Disappointed participants in the redistricting process – and there invariably are some – have every incentive to recast their political disagreements as racial

ones. See Pamela S. Karlan, The Rights to Vote: Some Pessimism About Formalism, 71 Tex. L. Rev. 1705, 1733-35 (1993) (describing how political parties have tried to "commandeer" the Voting Rights Act for political advantage); Pamela S. Karlan, Still Hazy After All These Years: Voting Rights in the Post-*Shaw* Era, 26 Cumb. L. Rev. 287, 297 n.60 (1996) (noting how several *Shaw* lawsuits were "stalking horse cases in which disappointed aspirants for elective office use whatever statutory handle is available to challenge the otherwise unreviewable outcomes of the political process"). A regime in which courts apply relatively more searching review to challenges to irregularly shaped majority-nonwhite districts than they do to irregularly shaped majority-white districts is inherently unstable, particularly in a world where race and political affiliation often coincide, see, e.g., *Georgia v. Ashcroft*, 123 S. Ct. 2498, 2506 (2003). Precisely because it may often be difficult for courts to disentangle partisan and racial motivations, and because creating a situation in which political actors face an incentive to discuss their disagreements in racial, rather than political, terms is so damaging to the democratic process, this Court should realign the standards for proving unconstitutionally excessive uses of partisan and racial considerations. As Justice Stevens observed in his concurrence in the judgment in *City of Mobile v. Bolden*, 446 U.S. 55, 88-89 (1980), "surely there is no national interest in creating an incentive to define political groups by racial characteristics." But as long as the Constitution is interpreted to make it easier to challenge an irregularly shaped district by claiming it is a racial gerrymander than it is to advance a political claim, "such an incentive [will] inevitably result."

II.. A "Predominant" Factor Test Based on Factors Such as the Nature of the Legislative Process that Produced the Challenged Redistricting or a Disregard of Traditional Districting Principles Is Judicially Manageable

This Court's experience with the *Shaw* cases not only provides a strong reason for rethinking the framework for assessing claims of unconstitutional political gerrymandering; it also suggests the contours of a more appropriate standard. Not only is there a more meaningful, but nonetheless judicially manageable, way of reviewing political gerrymandering claims, but the significant decline in *Shaw* claims following the 2000 round of redistricting suggests that articulating a more meaningful constraint on the permissible degree of partisanship will not significantly expand judicial involvement in the political process.

This Court's *Shaw* jurisprudence rests largely on assessment of precisely the factors that Justice Stevens identified in his concurrence in *Karcher v. Daggett*, 462 U.S. 725, 753-61 (1983), and Justice Powell discussed in his concurrence and dissent in *Bandemer*, 478 U.S. at 173: the shapes of the challenged districts; their adherence to established political subdivision boundaries; the nature of the legislative procedures that produced them; and the goals reflected in the legislative history. See, e.g., *Miller*, 515 U.S. at 907-09, 917-20 (discussing the shape of the challenged Eleventh Congressional District, its splitting of political subdivisions, and the Department of Justice's heavy involvement in the redistricting process). And this Court has long indicated that "[t]he specific sequence of events leading up to the challenged decision ... may shed some light" on whether the decisionmaker acted with an invidious or a permissible purpose. *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267 (1977). This Court's experience with the

application of a predominant purpose test in a variety of situations suggests that it could extend such an inquiry to political gerrymandering claims.

It is true that *Shaw v. Reno* unleashed a flood of litigation. See Issacharoff, Karlan & Pildes, supra, at 905-06. But there has been a striking decline in such litigation following the post-2000 round of redistricting. One reason for this decrease is that legislators complied with the Court's ban on excessive reliance on race in the redistricting process, even as they continued to use race as one among many factors. There is every reason to think that a straightforward declaration by this Court that while partisan considerations can play *some* role in redistricting, they cannot completely subordinate such traditional districting principles as compactness and contiguity, respect for political subdivision boundaries and the cores of prior districts, and only one round of redistricting per decennial census will have an equally salutary effect.

Conclusion

For the foregoing reasons, *amici* urge this Court to reverse the decision of the United States District Court for the Middle District of Pennsylvania.

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IN THE

Supreme Court of the United States

RICHARD VIETH, *et al.*,

Appellants,

v.

ROBERT C. JUBELIRER, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIEF OF *AMICI CURIAE* THE AMERICAN CIVIL LIBERTIES UNION AND THE BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW IN SUPPORT OF APPELLANTS

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INTERESTS OF THE *AMICI CURIAE*

Amici curiae, the American Civil Liberties Union and the Brennan Center for Justice at NYU School of Law, are non-partisan organizations that defend representative democracy under the United States Constitution.[1] *Amici* believe partisan gerrymandering will continue to undermine representative government unless restrained by the courts.

SUMMARY OF ARGUMENT

Partisan gerrymandering is more brazen than ever. Otherwise conscientious legislators publicly boast of skewing electoral outcomes. Openly rigging control of legislatures a decade in advance is considered neither unusual nor improper. Seventeen years after the Court found partisan gerrymandering claims to be justiciable, politicians regularly behave as if the Court had reached the opposite conclusion.

How did we reach this pass? In *Davis v. Bandemer*, 478 U.S. 109 (1986), the Court held that victims of partisan gerrymanders could, in theory, turn to the courts for relief. Unfortunately, the *Bandemer* plurality failed to enunciate a practicable standard for legislators to follow and lower courts to apply. As a result, the past seventeen years have witnessed increasingly effective manipulation of district lines by both major parties, even as lower courts lamented their perceived inability to do anything about it. This appeal provides an opportunity to give practical meaning to *Bandemer*'s theoretical holding and eliminate one of the most egregious kinds of partisan gerrymander: those that guarantee a favored party control of a majority of legislative seats even if another party wins a majority of the votes.

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[1] No party's counsel authored any part of this brief. No person or entity other than *amici* and counsel contributed monetarily to preparing or submitting the brief. Letters from all parties' counsel consenting to the filing of this brief have been lodged herewith.

From *Baker v. Carr*, 369 U.S. 186 (1962), to *Bush v. Gore*, 531 U.S. 98 (2000), the Court has insisted on equal treatment for all voters. The same principle should apply when improper differential treatment is based on political expression or association. Under *Bandemer*, the Constitution does not require proportional partisan representation, nor is a voter entitled to elect a candidate of his or her choice. But all voters should have an opportunity to compete in the electoral arena and to aggregate their votes with likeminded voters on the same terms as their ideological rivals. A scheme like Pennsylvania's, in which it is irrelevant which faction receives the most votes, intentionally penalizes voters with disfavored political viewpoints and violates the most elementary principles of democracy.

Treating voters unequally because of their beliefs denies the vision of representative democracy embodied in the Constitution's structure and illuminated by its history. That vision includes majority rule, accountability of the government to the electorate, and the political equality of all citizens. Insulating a governing faction from removal by a majority of voters violates each of these principles and is proscribed by the First Amendment, the Equal Protection Clause, and (depending on whether federal or state legislatures are at issue) the Elections Clause or the Guarantee Clause.

ARGUMENT

I.
In the Two Decades Since *Bandemer*, Partisan Gerrymandering Claims Have Been Justiciable in Name Only.

Contemporary redistricting practices are subverting American democracy. As then-Professor (now Judge) McConnell put it, the precise tools available to today's line-drawers lead to "[p]rotection for incumbents, a tendency toward homogeneous—and hence more partisan—districts,

racial and partisan gerrymandering, and ultimately, a widespread sense that elections do not matter." Michael W. McConnell, *The Redistricting Cases: Original Mistakes and Current Consequences*, 24 Harv. J.L. & Pub. Pol'y 103, 103–04 (2000). The legitimacy of a democratic government depends on citizens' confidence that they ultimately control the government through the ballot. Thus, even if citizens were mistaken in their "sense that elections do not matter," their belief alone would be cause for grave concern. But the evidence shows that the partisan balance of many legislatures is determined long before elections are held, and citizens' belief that their votes are generally irrelevant is eminently reasonable. More troubling still, gerrymanders have become more severe even as courts have entertained—and rejected—challenges under *Bandemer*.

A. Both Major Parties Regularly Create Partisan Gerrymanders.

Gerrymandering has made elections "less a reflection of popular opinion than of legislative craftsmanship." *Id.* at 103. Skewing electoral outcomes has long been a bipartisan sport. *See Martinez v. Bush*, 234 F. Supp. 2d 1275, 1297 (S.D. Fla. 2002) (three-judge court) ("This raw exercise of majority legislative power does not seem to be the best way of conducting a critical task like redistricting, but it does seem to be an unfortunate fact of political life around the country."). What is new is computer software that projects electoral outcomes with unprecedented ease and accuracy. *See id.* at 1352 (Hinkle, J., concurring) ("[T]he 'sea change' of advancing technology . . . has substantially increased the *extent* of successful political gerrymandering that is achievable . . . .").

Michigan, for example, lost a single House seat after the 2000 census, yet the Republican-dominated state legislature managed to pair six Democratic incumbents in three districts. *How to Rig an Election*, The Economist, Apr. 27, 2002, at 47.

The task was skillfully accomplished. Although Republican Congressional candidates garnered 35,000 fewer votes than their Democratic counterparts in the 2002 general election, the State sent nine Republicans and only six Democrats to the House of Representatives. *See* http://miboecfr.nicusa.com/election/results/02GEN/06.HTM.[2] In the previous Congress, the Michigan delegation had split 9–7 in favor of the Democrats. *See O'Lear v. Miller*, 222 F. Supp. 2d 850, 853 (E.D. Mich.) (three-judge court), *aff'd*, 123 S. Ct. 512 (2002).

Similarly, the Florida delegation is nearly three-quarters Republican, and both houses of the state legislature are two-thirds Republican, even though statewide races are closely fought between the two major parties. This was the legislature's avowed aim. *See Martinez*, 234 F. Supp. 2d at 1350–51 (Hinkle, J., concurring) ("From all indications, the legislature did an outstanding job; in a state with a notoriously close division of Democratic and Republican voters statewide, 18 of the 25 congressional districts have been drawn to cover areas in which voters have exhibited a clear voting preference for Republicans. A similar pattern is present for the State Senate and House.") (footnote omitted).

Republicans are only doing unto Democrats as Democrats have done unto them. In the 1980s, for example, California's Democratic legislators redistricted the state's Congressional districts to the extreme disadvantage of the Republican Party. The state's voters passed a referendum rejecting

[2] There were no Republican candidates in two districts, which affects the utility of the statewide aggregate vote. *See infra* n.9 Other measures, however, also show that a fair set of districts would have produced a drastically different outcome, including: the Democratic gubernatorial candidate's 127,000-vote victory; the reelection of an incumbent Democratic U.S. Senator by more than 700,000 votes; the Democratic presidential candidate's carrying the state in 2000; and the unseating of an incumbent Republican U.S. Senator in the same election.

the redistricting. Nonetheless, the legislature reenacted virtually the same plan, which was signed by a lame-duck Democratic governor shortly before his Republican successor took office. *See Badham v. Eu*, 694 F. Supp. 664, 666 (N.D. Cal. 1988) (three-judge court), *aff'd*, 488 U.S. 1024 (1989). In the next Congressional election, Republican candidates received 50.1% of the vote, but Democrats took 60% of California's House seats. *Id.* at 670.

More recently, Maryland's Democratic governor drafted state and federal redistricting plans that were assailed in part as gerrymanders, both on party grounds and for the way in which they punished individual legislators whom the governor considered political enemies. The state redistricting plan was struck down for violating the state constitutional requirement to give "due regard" to the boundaries of political subdivisions. *In re Legislative Districting of the State*, 805 A.2d 292 (Md. 2002). The House of Representatives plan, which was designed to (and did) eliminate Republican Congresswoman Connie Morella, helped to convert the state's delegation from 4–4 to 6–2 in favor of the Democrats, but was upheld by the Fourth Circuit. *See Duckworth v. State Admin. Bd. of Election Laws*, 332 F.3d 769 (4th Cir. 2002); Sarah Koenig, *Congressional Districts Fought in Federal Suit*, Baltimore Sun, June 19, 2002, at 1B ("Even many Democrats have been hard-pressed to defend the congressional map's lines, which in places look as if they were drawn by a child experimenting with an Etch-A-Sketch.").

Around the same time, Georgia's Democratic governor and Democrat-controlled legislature used serpentine district lines and novel multi-member districts to squeeze every possible drop of partisan advantage from Georgia Senate elections. Their effort paid off: Republican candidates received 55% of the two-party vote in 2002, but Democrats won 55%

of the seats. *See* http://www.sos.state.ga.us/elections/results/2002_1105/senate.htm.[3] Democrats also gained two seats in Congress, in an election in which voters rejected Democratic incumbents in races for Governor and U.S. Senator. At the same time, Democrats eliminated Republican Congressman Bob Barr, a manager of President Clinton's impeachment trial, by putting him in the same district as another Republican incumbent, in spite of the state's having received two additional seats in the House.[4]

Republicans had Georgia on their minds when they gerrymandered Pennsylvania and provoked this litigation. "Democrats rewrote the book when they did Georgia, and we would be stupid not to reciprocate," said Virginia Rep. Thomas M. Davis III, Chairman of the National Republican Congressional Committee. Rep. Davis promised that the Pennsylvania redistricting "will make Georgia look like a picnic." Thomas B. Edsall, *Democrats Hold Edge Over GOP in Redistricting; Gains Still Possible for Republicans*, Washington Post, Dec. 14, 2001, at A55.

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[3] Four Democratic Senators later switched parties, giving Republicans control of the senate. Majority rule should not depend on individual officials' idiosyncratic decisions. Furthermore, Republicans were lucky in the senate election. They won four seats by fewer than 1000 votes, including three by fewer than 300 votes. If Democrats had received 1500 more votes in the right districts (of more than 1.8 million votes cast), they would have won 60% of the seats with 45.1% of the vote. *See* http://www.sos.state.ga.us/elections/results/2002_1105/senate.htm.

[4] Four-color maps and other information about the Georgia Congressional and state legislative districts are available at http://www.georgia2000.org/redistricting/. Republican voters have sued, contending among other things that the new districts intentionally diminish plaintiffs' voting power on the basis of their political beliefs and party affiliation. *See Larios v. Perdue*, No. 03-CV-693 (N.D. Ga.) (three-judge court), am. cplt. filed Aug. 6, 2003.

Rep. Davis's blunt talk—"we would be stupid not to reciprocate"—is typical. There is no shame among politicians in using the ostensibly governmental function of redistricting to pursue pure partisan advantage; the shame would be displaying "stupidity" by acting evenhandedly. Pennsylvania media publicized a letter from the Speaker of the U.S. House and the U.S. House Majority Leader to the state's Republican leadership: "We wish to encourage you in these efforts, as they play a crucial role in maintaining a Republican majority in the United States House of Representatives." Letter from Hastert and DeLay to Pa. Senate Repub. leaders 1/2/02; *see also* John L. Micek, *GOP-run Legislature Approves Redistricting Map*, Morning Call (Allentown, Pa.), Jan. 4, 2002, at B2. Pennsylvanians know that district lines are drawn, not to ensure that their wishes are respected, but to bolster the control of the party in power.

B. The Vague *Bandemer* Standard Has Not Slowed the Proliferation of Partisan Gerrymanders.

More galling than the fact of partisan gerrymandering is that it has flourished in the face of this Court's decision in *Bandemer*. Since 1986, victims of gerrymanders have been, in theory, entitled to redress if they establish "intentional discrimination against an identifiable political group and an actual discriminatory effect on that group." *Bandemer*, 478 U.S. at 127–28. But lower courts have erected barriers to relief that are practically insuperable. "As a result, although partisan gerrymandering is rife, the courts have done virtually nothing to control it." Richard A. Posner, *Law, Pragmatism, and Democracy* 245 (2003) (footnote omitted).

Bandemer rightly subjected partisan gerrymandering to judicial review, but the job is only half done. What remains is giving more precise content to the constitutional test by holding that a particular set of facts makes out a viable claim.. "[L]ower courts continue to struggle in an attempt to interpret

and apply the 'discriminatory effect' prong of the standard articulated by the *Bandemer* plurality." *Martinez*, 234 F. Supp. 2d at 1352 (Jordan, J., concurring); *see also O'Lear*, 222 F. Supp. 2d at 855 (finding discriminatory effect prong "somewhat murky"). While lower courts have been clear about what *Bandemer* does not require—proportional representation, for example—there has been little guidance on what *Bandemer* does require.

The *Bandemer* test's vagueness has rendered it useless in practice. Judge McConnell considers the *Bandemer* standard "so toothless that [the Court] might as well have held partisan gerrymandering nonjusticiable." McConnell, 24 Harv. J.L. & Pub. Pol'y at 114. His conclusion is shared by virtually all judicial and academic observers. *See Martinez*, 234 F. Supp. 2d at 1352–53 (Jordan, J., concurring) (collecting authorities). The futility of challenging partisan gerrymanders in court has freed legislators to engage in the most egregious behavior, justifiably believing they will not be brought to account. *See* Claude R. Marx, *Democrats Vow Lawsuit over State's Congressional Redistricting*, Intelligencer Journal (Lancaster, Pa.), Jan. 5, 2002, at B1 (quoting Pennsylvania House Democratic Whip Mike Veon) ("To the victors go the spoils. No state court or federal court will overrule this.").

Lower courts' attempts to clarify the *Bandemer* standard have not helped. Reformulations of the test have tended either to be equally vague themselves or, to the extent they enunciate clear rules, to be impossible to satisfy. For instance, what is a legislator to make of this pronouncement:

> *Bandemer* draws no bright lines, and neither do we attempt to set forth the *sine qua non* of an unconstitutional reapportionment scheme, except to say that the plaintiffs must set forth allegations which, if proven, justify court intervention into an essentially legislative process.

O'Lear, 222 F. Supp. 2d at 859. *Terrazas v. Slagle*, 821 F. Supp. 1162, 1174 (W.D. Tex. 1993) (three-judge court), tried to do better, saying a disfavored group of voters could prevail

> if it presents evidence of a group perpetuating its power through gerrymandering in one political structure and that the wronged partisan group cannot over the long haul counteract this tactic through its influence in another relevant political structure or structures.

But how long is "the long haul"? How many years—or decades—must the victimized party vainly try to overcome the effects of gerrymandering before it can satisfy the *Terrazas* standard?

Terrazas, besides failing to enunciate a clear standard, also exemplifies another trend in lower courts' treatment of *Bandemer*: imposing impossible proof requirements on plaintiffs. Indeed, it appears most cases are dismissed at the pleading stage because there is no prospect of producing the kinds of evidence courts demand. The Michigan gerrymander, for instance, transformed the state's delegation from 9–7 in favor of Democrats to 9–6 in favor of Republicans in an election in which Democratic Congressional candidates received more votes statewide than Republicans and the state elected a Democratic governor. Democratic voters "alleged disproportionality in abundance, and . . . the amended complaint contains ample charges of discriminatory motive and procedural irregularities." *O'Lear*, 222 F. Supp. 2d at 859. Nonetheless, the complaint was deemed deficient, and the case was dismissed.

Also as in *Terrazas*, other courts have demanded proof that attempts to rectify a gerrymander are doomed to fail over "the long haul." *O'Lear* held that when a minority party rigs district lines to give it a majority of seats, majority-party

voters must prove the discriminatory scheme has "some substantial permanency" because it cannot be "overcome through the political process." *Id.* at 856. Demanding "permanency" or effects over "the long haul" renders *Bandemer*'s protection illusory. For biennially elected legislatures, each redistricting is used for only five elections which the *Terrazas* and *O'Lear* courts might not regard as enough iterations to prove long-term effects. It seems the only way to satisfy these courts would be to suffer through several successive decennial gerrymanders. By this point, many affected voters will have died, and survivors will have gone decades without fair representation.

Even the most vigorous short-term efforts to undo a gerrymander have not sufficed. Recall that in *Badham*, California voters passed a referendum to rescind the gerrymandered map. The Democratic legislature, working with a lame-duck Democratic governor, rushed through a nearly identical redistricting plan that hamstrung Republican Congressional candidates for the rest of the decade. What more could Republican voters have done to show they could not repair the gerrymander through political channels? Whatever it was, they failed to do it, and their complaint was dismissed.

Badham applied another standard that dooms many cases: a stringent definition of what it means to "consistently degrade a voter's or a group of voters' influence on the political process as a whole," as *Bandemer* requires. The complaint failed, the *Badham* court ruled, because plaintiffs did not plead

> that anyone has ever interfered with Republican registration, organizing, voting, fund-raising, or campaigning. Republicans remain free to speak out on issues of public concern; plaintiffs do not allege that there are, or have ever been, any impediments to their full participation in the 'uninhibited, robust,

> and wide-open' public debate on which our political system relies.

Badham, 694 F. Supp. at 670 (citation omitted). This test, which the court below adopted, *Vieth v. Pennsylvania*, 188 F. Supp. 2d 532, 545–47 & n.12 (M.D. Pa. 2002), requires a level of persecution that is hard to imagine being visited on a party that could win a significant number of seats in a fair election. The court below, following *Badham*, required a record of widespread violations of First Amendment rights. *Bandemer* teaches, however, that victims of a gerrymander suffer an independent constitutional injury; the test cannot depend on establishing constitutional violations separate from the gerrymander itself.

Bandemer is like *Baker v. Carr*: it announced that the dispute was justiciable without laying down precise standards to resolve it. *See* Richard L. Hasen, *The Benefits of "Judicially Unmanageable" Standards in Election Cases Under the Equal Protection Clause*, 80 N.C. L. Rev. 1469, 1501 (2002). Just as the Court developed *Baker*'s germinal principle into a manageable doctrine in *Reynolds v. Sims* and later cases, the *Bandemer* test needs further definition. The current standard has countenanced a race to the bottom in which each party tries to outdo the other in abusing control of state legislatures. The extraordinary mid-decade "re-redistrictings" in Colorado and Texas (and threatened elsewhere by both major parties) are only the latest level to which partisan manipulation of the democratic process has sunk.

None of this is necessary. If the Court enunciates clear and enforceable standards, legislators will have an incentive to adhere to them and avoid judicial intervention. Further, with fewer "spoils" available, there should be fewer political deadlocks that require courts to draw districts in the first instance. (Both the Texas and the Colorado re-redistrictings follow such judicial line-drawing). The Court's decision can

stem the antidemocratic tide—a rip tide that, as we shall now show, has tumbled the Constitution's structural requirements on their head.

II.
Partisan Gerrymanders Deny the Majority Rule and Electoral Accountability the Constitution Requires.

Representative democracy, protected by federalism and the separation of powers, is the essence of the Constitution. Two democratic postulates—government is constituted by the will of the majority, and must remain regularly accountable through meaningful elections—are embedded in the very structure of the Constitution. These principles are also crystallized in particular clauses, examined below.[5]

A. The Constitution Embodies the Framers' Vision of Representative Democracy.

The Court has attended to the Constitution's structure, as well as to the text of specific clauses, in adjudicating the division of power both among the branches, s*ee, e.g.*, *INS v. Chadha*, 462 U.S. 919, 946 (1983) ("The very structure of the Articles delegating and separating powers under Arts. I, II, and III exemplifies the concept of separation of powers . . . ."); *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 64 (1982) (plurality opinion) ("[T]he literal command of Art. III, assigning the judicial

[5] Political gerrymanders derogate from both majority rule and accountability. Accountability is also violated by another common practice: entrenching incumbents of both parties. For example, California Democrats avoided a referendum on redistricting by effectively guaranteeing no diminution for ten years in the number of Assembly, state Senate, and federal House seats held by Republicans. *See* Carl Ingram, *Davis OKs Redistricting that Keeps the Status Quo*, L.A. Times, Sept. 28, 2001, at B12. Such "bipartisan gerrymanders" should receive greater judicial scrutiny than they have, but the issue is not presented in this case and should be subject to a different analysis.

power of the United States to courts insulated from Legislative or Executive interference, must be interpreted in light of the . . . structural imperatives of the Constitution as a whole."), and between the federal and state governments, s*ee, e.g.*, *Alden v. Maine*, 527 U.S. 706, 728 (1999) ("[S]overeign immunity derives not from the Eleventh Amendment but from the structure of the original Constitution itself."); *Fed. Maritime Comm'n v. S. Car. State Ports Auth.*, 535 U.S. 743, 754 (2002) (applying "the sovereign immunity embedded in our constitutional structure").

The most fundamental division of power in our democracy—between the government as a whole and the people from whom it derives all legitimate authority—similarly suffuses the Constitution. *See Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979) ("[V]oting is of the most fundamental significance under our constitutional structure."). The Constitution embodies a normative vision of democratic self-governance amenable to coherent judicial protection. The Framers included in the text numerous structural elements to give effect to the popular will.[6] Other elements are designed to temper excessive swings in the public mood and moderate the effect of popular opinion on the government, such as the six-year term for Senators, the life-tenured judiciary, and the Bill of Rights. But there can be no question when it comes to the House of Representatives, the body at issue in this case, that the Framers intended direct and almost instantaneous response to shifting popular majorities to be its animating principle.

[6] *See, e.g.*, art. IV, § 4 (guaranteeing states a republican form of government); art. I, § 2, cl. 1 (requiring periodic election of House members by "the people"); art. I, § 2, cl. 3 (providing for decennial enumeration and establishing minimum population of House districts); art. 1, § 2, cl. 4 (requiring House vacancies to be filled by elections, not appointments).

Of the 17 amendments adopted after the Bill of Rights, 12 deal with the democratic process and the government's ongoing accountability to the people. The Fourteenth Amendment establishes national citizenship, requires states to provide equal protection of the laws (including voting districts of equal population), and makes states' representation in Congress depend on their granting suffrage to newly freed slaves. The Fifteenth, Seventeenth, Nineteenth, Twenty-Third, Twenty-Fourth, and Twenty-Sixth Amendments implement equal universal suffrage by banning voting discrimination on the basis of race, sex, wealth, or youth; providing for direct popular election of Senators; and permitting residents of the District of Columbia to participate in presidential elections. The Twelfth, Twentieth, Twenty-Second, and Twenty-Fifth amendments provide for separate elections of the President and Vice-President, limit a lame-duck President's term, impose a two-term limit on the Presidency, and provide for orderly succession in time of Presidential disability. The Twenty-Seventh amendment regulates Congressional self-interest, by forbidding Members to raise their own pay.

Thus, the contemporary text of the Constitution views every American as a member of a self-governing community of political equals and guarantees to each the right to participate in democracy through voting, running for office, and fair representation. It is this normative vision that underlies *Baker* and *Kramer v. Union Free School District*, 395 U.S. 621 (1969). It is this vision that empowers, indeed commands, the Court to prevent partisan gerrymanders that mock representative democracy.

B. Modern Redistricting Reverses the Framers' Conception of the Houses of Congress.

For the first 120 years of our constitutional history, the people elected Representatives, and state legislatures selected

Senators. Now, the reverse is true: Senate races, not being subject to districting, are decided by voters, while legislatively drawn House districts make foregone conclusions of the overwhelming majority of races. Further, as in the Michigan, Florida, and Pennsylvania redistrictings described in *O'Lear*, *Martinez*, and this case, state legislatures can target individual Representatives for defeat (by pairing incumbents in a new district or changing the political makeup of a district) or re-election (by creating a "safe" seat). To a significant extent in many states, the legislature selects the delegation to the House of Representatives.

Gerrymanders frustrate not only the Framers' plan for the House to reflect fluid popular majorities, but also their insistence that Representatives remain accountable through frequent elections. The House was meant to be a "numerous and changeable body" whose membership would reflect shifting popular will. *See The Federalist* No. 63, at 305 (James Madison) (Terence Ball ed., 2003). Madison's task in the two Federalist papers on the House of Representatives was to persuade doubters that two years was not too long a period for the people to wait to replace their legislators. *See The Federalist* No. 53, at 259 (James Madison) ("I shall here perhaps be reminded of a current observation, 'that where annual elections end, tyranny begins.'"); *The Federalist* No. 52, at 256 (James Madison) ("[I]t is particularly essential that the [House] should have an immediate dependence on, and an intimate sympathy with the people. Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured.").

Representatives must face the prospect of defeat frequently, lest they forget the source of their authority. *See The Federalist* No. 57, at 279 (James Madison) ("[T]he House . . . is so constituted as to support in the members an habitual recollection of their dependence on the people. Before the sentiments impressed on their minds by the mode

of their elevation, can be effaced by the exercise of power, they will be compelled to anticipate the moment when their power is to cease . . . ."). The House was, as then-Professor (now Judge) Bybee noted, "the Eighteenth Century equivalent of government by poll." Jay S. Bybee, *Ulysses at the Mast: Democracy, Federalism, and the Sirens' Song of the Seventeenth Amendment*, 91 Nw. U. L. Rev. 500, 516 (1997).

Where the House was designed to be volatile, the Senate was intended to be stable. Madison explained that Senators would serve six-year terms as a defense against "the impulse of sudden and violent passions" to which the body more immediately responsive to the public would be prone. *The Federalist* No. 62, at 302 (James Madison). To serve that stabilizing function, the Senate must "possess great firmness, and consequently ought to hold its authority by a tenure of considerable duration." *Id*; *see also* Todd J. Zywicki, *Beyond the Shell and Husk of History: The History of the Seventeenth Amendment and its Implications for Current Reform Proposals*, 45 Clev. St. L. Rev. 165, 180 (1997) (quoting Roger G. Brooks, Comment, *Garcia, The Seventeenth Amendment, and the Role of the Supreme Court in Defending Federalism*, 10 Harv. J.L. & Pub. Pol'y 189, 195 & n.36 (1987)); Bybee, 91 Nw. U. L. Rev. at 512–16.

The two bodies were designed to serve different purposes; the rapid changeability of the House was a virtue, so long as it was tempered by the Senate's slower reflexes. Thus, Madison contended that the Senate must be stable in membership, because "[e]very new election in the states, is found to change one half of the representatives." *The Federalist* No. 62, at 303 (James Madison). How different a nation we live in today. In 2002, aspiring Representatives defeated incumbents not one-half of the time, as Madison expected, but one-one hundredth.

It is now the Senate that is (relatively) changeable and the House whose membership is nearly immutable. In 2002, of the 386 incumbent Representatives who ran for re-election against non-incumbents,[7] all but four won. By contrast, three of 26 incumbent Senators were defeated—not a large number, to be sure, but proportionately almost 12 times the fraction of beaten Representatives. This number does not include one Senator (Robert Torricelli of New Jersey) who withdrew from the race when it became clear he would lose, another (Paul Wellstone of Minnesota) who died a few days before what was expected to be a very close contest, and a third (Tim Johnson of South Dakota) who won re-election by barely 500 votes. As Professor Garrow observed, contrary to the Framers' expectation, "it is the House that has become uncompetitive, sclerotic and immune to change. The culprit is the gerrymandering of Congressional districts. If reform is not enacted soon, democratic choice will be sapped out of the House altogether." David J. Garrow, *Ruining the House*, N.Y. Times, Nov. 13, 2002, at A29; *see also How to Rig an Election*, The Economist, Apr. 27, 2002, at 47 ("If the average Californian doesn't like his Congressman, the only option is to call the moving vans.") (quoting Republican advisor Dan Schnur).

It is doubtless true that helpful district lines are not the only reason incumbents do well. But it is also true that many districts are designed to make it futile for the opposing party to challenge an incumbent, or even to field a candidate for an open seat. There were 49 House races in 2002 in which no incumbent ran. Of those, more than 70% were "uncompetitive" by the standards of political science, i.e., the winner had more than a ten-point margin over the runner-up. Fiercely partisan redistricting does not simply protect incum-

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[7] Because of redistricting, there were four races in which two incumbent Representatives faced each other.

bents. It allocates 90% or more of House seats to one party or the other, leaving a relative handful of voters in 35 or so "swing" districts to decide which party controls Congress. The time, energy, and political capital spent on redistricting suggest that the power to draw the map is very nearly the power to control the government.

Thus, while the primary vice of a political gerrymander is its violation of majority rule and political equality, it also derogates from the principle of governmental accountability. We have "a system of government that relies upon the ebbs and flows of politics to 'clean out the rascals.'" *United States Trust Co. v. New Jersey*, 431 U.S. 1, 45 (1977) (Brennan, J., dissenting). A House in which 99% of incumbents who run for reelection defeat their challengers, and in which 400 seats are essentially locked up by one party or the other, is not the responsive body the founding generation had in mind. *See* Daniel R. Ortiz, *Federalism, Reapportionment, and Incumbency: Leading the Legislature To Police Itself*, 4 J.L. & Pol. 653, 675 (1988) (noting that representatives in gerrymandered districts can "pursue their self-interests at the expense of their constituents' interests with less fear of being unseated"). An entrenched legislature lacks the essential democratic feature of accountability to the people.

It need not be so. In Iowa, for example, the civil servants charged with drawing districts are directed not to take account of incumbency or other political factors.[8] Not coincidentally, four of Iowa's five Congressional races in 2002

[8] All redistricting processes, including non-legislative processes like Iowa's, must comply with the Voting Rights Act. In jurisdictions subject to Section 5's preclearance provisions, 42 U.S.C. § 1973c, non-legislative redistricting bodies must be directed to take race into account. No set of districts in any jurisdiction, no matter who draws them, may dilute minority voting strength in violation of Section 2, 42 U.S.C. § 1973.

were competitive. A State with one-ninetieth of the House seats produced one-tenth of the meaningful elections.

C. Four Constitutional Clauses Directly Protect Voters from Extreme Partisan Gerrymanders.

1. Elections Clause.

The Pennsylvania legislature openly sought to assure one party almost two-thirds of the House seats, whether or not the party garnered anything close to a plurality of votes. That exercise in viewpoint discrimination falls outside the power the Elections Clause delegates to state legislatures: "The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each state by the legislature thereof . . . ." U.S. Const. art. I, § 4. The Elections Clause was meant to limit state legislatures' influence over the House. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 808 (1995). Electoral mechanisms designed to "place their targets at a political disadvantage" are outside states' Elections Clause authority. *Cook v. Gralike*, 531 U.S. 510, 525 (2001) (invalidating indication on ballot of candidates' failure to support term limits).

Limits on the legitimate use of time, place, or manner regulations are not unknown to constitutional jurisprudence. In the analogous First Amendment context, the Court has repeatedly ruled that viewpoint-based regulations of speech cannot be defended as mere time, place, or manner regulations. *E.g.*, *Police Dep't of Chicago v. Mosley*, 408 U.S. 92 (1972); *Carey v. Brown*, 447 U.S. 455 (1980). Indeed, as the Chief Justice and Justice O'Connor noted in their concurrence in *Cook*, 531 U.S. at 531–32, the Election Clause mirrors the First Amendment in forbidding content-based, let alone viewpoint-based, time, place, or manner regulations. *Cf. Tashjian v. Republican Party*, 479 U.S. 208 (1986) (upholding power to set content-neutral procedures for Congressional elections).

Abusive partisan gerrymanders grant decisive power to citizens who have expressed favored political views and make it as difficult as possible for citizens with disfavored views to elect like-minded candidates. A state cannot possibly defend as a time, place or manner regulation an electoral system openly adopted for that viewpoint-based purpose. *See Cook*, 531 U.S. at 523 ("[T]he Framers understood the Elections Clause as a grant of authority to issue procedural regulations, and not as a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints.") (internal quotation marks omitted).

2. First Amendment.

The six textual clauses of the First Amendment form a set of concentric circles with the democratic citizen at the focus. The text opens with Establishment Clause protection of private conscience, moves to Free Exercise protection of public displays of conscience, continues with Free Speech protection of individual expression, extends to institutional expression of ideas by guaranteeing a Free Press, then goes on to Free Assembly protection of collective action, and culminates in protecting formal interaction with the government through Petitions for Redress of Grievances. The sequence is not random. The textual rhythm of Madison's First Amendment reprises the life cycle of a democratic idea, moving from the interior recesses of the human spirit to individual expression, public discussion, collective action, and finally direct interaction with government. Madison's vision remains one of our most valuable guides to the kind of democracy the Constitution guarantees.

Electoral politics thus implicate the First Amendment's core purpose. Much of this Court's First Amendment jurisprudence has been devoted to the proposition that government must remain neutral regarding its citizens' ideological

expression and association. "[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter or its content." *Mosley*, 408 U.S. at 95. The political acts of voting and running for office are quintessential exercises of free speech and free association. *See, e.g.*, *Anderson v. Celebrezze*, 460 U.S. 780 (1983) (recognizing right to run for office as act of political association between candidate and supporters); *Burdick v. Takushi*, 504 U.S. 428, 433–34 (1992) (noting regulation of voting burdens First Amendment rights but holding that standard of review varies with circumstances). The neutrality principle has particular force when it comes to elections.

Elections are a formal, structured marketplace of expression. Each candidate seeks to persuade voters that his or her ideas (and the ideas of the party to which the candidate belongs) should be enacted into law. Unless government remains neutral in administering the contest, the electoral competition cannot operate fairly. It would be self-defeating to expend substantial judicial resources defending a neutral marketplace of ideas on sidewalks and in parks, only to allow the government to rig the outcome of elections that are the culmination and object of the First Amendment's textual protections. If the Constitution forbids denying governmental employment because of an individual's political affiliation or belief, *see Elrod v. Burns*, 427 U.S. 347 (1976), and forbids conditioning government contracts on support for political incumbents, *see O'Hare Truck Serv., Inc. v. City of Northlake*, 518 U.S. 712 (1996), it cannot countenance burdening the right to vote on the same forbidden bases.

This Court has recognized that the First Amendment's structure implies essential non-textual rights. Thus, in *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), the Court, through Justice Harlan, interpolated a non-textual right of association between the textual rights of speech and

assembly, recognizing that freedom of association is necessary to the enjoyment of the six textual rights. *See also, e.g.*, *NAACP v. Button*, 371 U.S. 415 (1963); *Keyishian v. Board of Regents*, 385 U.S. 589 (1967). The right to have one's vote count equally irrespective of the viewpoint the vote expresses is also a logical and necessary extension of the textual rights of speech, assembly, and petition.

3. Equal Protection Clause.

Burdening the rights of voters who express certain viewpoints, or who have certain political affiliations, also violates equal protection. In *Baker* and its progeny, the Court prohibited apportionments that systematically underweight the votes of citizens in particular districts. *See, e.g.*, *Reynolds v. Sims*, 377 U.S. 533, 565–66 (1964) ("[D]iluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race."). In *Kramer* and *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966), the Court barred allocating the franchise on differential grounds. This jurisprudence has provided powerful protection of the right to vote on equal terms, culminating in *Bush v. Gore*, which stopped a recount because of a lack of uniform standards for counting votes.

The essence of *Baker* and *Bush* is equal treatment of each voter. Partisan gerrymanders fly in the face of the Court's voting equality jurisprudence by allowing legislators to alter the weight of a vote depending on the voter's residence and political views. Although vote dilution is inevitable under any districting scheme, and some voters will consistently be outvoted, "[i]t is one thing for a phenomenon to exist by necessity, and quite another for someone to distribute or redistribute it selectively." Daniel D. Polsby & Robert D. Popper, *The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering*, 9

Yale L. & Pol'y Rev. 301, 313 (1991). Intent converts an unfortunate inequity into an actionable injury. *See Washington v. Davis*, 426 U.S. 229 (1976). The Pennsylvania case is typical: politicians controlling the process openly admitted their intention to make some votes count more than others; and they succeeded, dooming disfavored voters to a decade of distorted representation. It was just such violations of the principles of representative government that *Baker* and *Bush* condemned.

The Court has struck down electoral systems in which one voter had a mathematically more potent vote than another, or in which different standards were used to count contested votes. Measured by the norms of statewide equal treatment mandated by *Bush*, Pennsylvania's gerrymander is clearly unconstitutional. Republican voters in Pennsylvania cast votes with twice as much electoral power as their Democratic fellow citizens. In 2002, in the sole statewide race, the Democratic candidate for governor won with 55% of the major-party vote in a race between non-incumbents. Yet Republicans won 63% of the Congressional seats, implying that there are fewer than half as many Republican voters per Republican Representative than Democratic voters per Democratic Representative.[9]

Of course, *Bandemer* does not require proportionality in these measures, but the Pennsylvania skew goes beyond mere disproportionality in one election. While a minority of Republican voters can regularly elect at least 63% of the delegation, the record suggests[10] that Democratic voters

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[9] It is difficult to make a similarly meaningful calculation using the aggregate votes cast for Republican and Democratic Congressional candidates because there were no Democratic candidates in five of the 19 districts and no Republican candidate in another district.

[10] Because the partisan gerrymandering claim was dismissed on the pleadings, the parties could not present all of the available evidence of the (cont'd)

would have to outnumber Republicans by between 8 and 20 percentage points to have any hope of electing even a majority of Pennsylvania's Representatives. Democratic voters will suffer this devaluation of their votes in every election for the rest of the decade. Such significant disparity in the electoral power of different citizens' votes is far more destructive of genuinely equal treatment than the often nominal mathematical disparities found unconstitutional by the Court in the one person, one vote cases. *See Karcher v. Daggett*, 462 U.S. 725 (1983).

4. Guarantee Clause.

The federal government must "guarantee to every State in [the] Union a Republican Form of Government . . . ." U.S. Const. art. IV, § 4.[11] Hamilton explained: "The true principle of a republic is, that the people should choose whom they please to govern them. Representation is imperfect in pro-

(cont'd)
Pennsylvania plan's partisan effects. The case should be remanded for specific factual findings on this issue.

[11] This case does not directly implicate the Guarantee Clause because it involves a Congressional electoral system, while the Clause applies to state governments. Legislators and lower courts will believe that the standard applied to state legislative redistricting can be no stronger, and may be weaker, than the standard the Court adopts in this case for Congressional redistricting. *See Mahan v. Howell*, 410 U.S. 315, 321–22 (1973) (applying more stringent standard to Congressional redistricting under Elections Clause than to state redistricting under Equal Protection Clause). Yet partisan gerrymanders are if anything more problematic in the state context, for two reasons: those drawing the lines may be the very candidates who stand to benefit from unfair districting; and a minority that controls a majority of state legislative seats controls the legislature itself, not just one delegation to a 435-member House. Accordingly, *amici* respectfully suggest that should the Court ground its decision on the Elections Clause, it make clear that the question remains open whether the same standard would apply to state redistricting under the Guarantee or Equal Protection Clauses.

portion as the current of popular favor is checked." *Powell v. McCormack*, 395 U.S. 486, 540–41 (1969) (quoting 2 *Debates on the Federal Constitution* 257 (J. Elliot ed. 1876)). However this constitutional mandate is reduced to operational doctrine, "at a minimum, the Clause must mean that a majority of the whole body of the people ultimately governs." McConnell, 24 Harv. J.L. & Pub. Pol'y at 114.

Partisan gerrymanders frustrate this command. Although a majority may fortuitously govern after a gerrymander, the presence of a majority ceases to be dispositive. "The members of a partially self-constituted legislature depend to a degree upon one another rather than upon their constituents for their tenure in office. Whatever 'representation' means, it cannot possibly mean that." Polsby & Popper, 9 Yale L. & Pol'y Rev. at 305.

The Court's one person, one vote cases are grounded in this conception of republican government as representative democracy. Equipopulation itself is not the ultimate goal, but an instrument for achieving "fair and effective representation." *Reynolds*, 377 U.S. at 565–66; *see also* Gordon E. Baker, *The Unfinished Reapportionment Revolution*, *in Political Gerrymandering and the Courts* 11, 11 (Bernard Grofman, ed., 1990) (arguing Court's leading cases show "population equality [is] merely a means to the end.").

The Framers warned against governmental thwarting of citizens' free selection of their representatives. "A Republic," said Madison, "may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected, as the number authorised to elect." 2 *Records of the Federal Convention of 1787* at 250 (Max Farrand ed. 1911). By ensuring that votes cast for one party have less effect than votes cast for another, partisan gerrymanders impose the limits Madison feared. *See* Samuel Issacharoff, *Gerrymandering and Political Cartels*, 116 Harv. L. Rev. 593, 615

(2002) ("The electorate can only express a 'free and uncorrupted choice' if it has the ability to select among competing political prospects."). A republican form of government cannot be one in which legislatures may with impunity insulate themselves or their allies from challenge.

III.
No State May Surrender Legislative Control, Irrespective of the Votes of the Majority, to a Favored Faction

The essential constitutional principle is that all voters must vote on equal terms. The government may not intentionally administer elections in a non-neutral fashion to debase any person's vote for partisan purposes. This case presents perhaps the clearest kind of violation of the fundamental requirement of government neutrality: an electoral system deliberately enacted to give a political faction control over a majority of seats regardless of whether it attracts the support of a majority, or even a plurality, of voters.

Entrenched minority control is the cardinal sin of malapportionment. *See Reynolds*, 377 U.S. at 570, 576 (decrying "a minority strangle hold on the State Legislature" and "frustration of the majority will"); *Baker*, 369 U.S. at 258–59 (Clark, J., concurring) (noting lack of "practical opportunities" for the "majority of the people" to correct malapportionment at the polls). Even in dissent from the trend towards a "one person, one vote" standard, Justice Stewart said that a districting plan "must be such as not to permit the systematic frustration of the will of a majority of the electorate of the State." *Lucas v. Forty-Fourth Gen. Assembly of Colo.*, 377 U.S. 713, 753–54 (1964) (Stewart, J., dissenting). When line-drawers intentionally cause a favored minority of voters to control a majority of legislative seats, the scheme is flatly unconstitutional. Such a blatantly anti-democratic practice stands the principle of majority rule on its head.

In Pennsylvania, whose voters divide almost evenly between two parties, the improperly entrenched party may win a majority of the votes in some elections but not in others. The Constitution views these two outcomes as fundamentally different. Pennsylvania treats them as indistinguishable. In a democracy, the connection between winning more votes than the opposition and gaining control of the government is not supposed to be fortuitous. Politicians deliberately designed Pennsylvania's Congressional districts to make the will of the majority irrelevant, an intentional perversion of democracy that the Constitution simply cannot abide. A districting plan that intentionally creates, or perpetuates, substantial disparities in a voter's or group of voters' influence on the political process violates the Constitution; enabling a political faction to retain control over a majority of the contested seats regardless of whether the faction attracts the support of a majority of the voters is among the clearest ways of creating such forbidden disparities.[12]

There remain four final considerations. First, the requirement for plaintiffs to prove discriminatory intent should not be overlooked. Such intent is often openly admitted in today's lawless redistricting environment, but courts should defer to future legislatures that have internalized the Constitution's requirements and adopted reasonable plans in good faith. It would be foolish to deny that redistricting is an inherently political process, particularly when carried out by a legislature. Judicial intervention is called for when intentional discrimination is so apparent and severe as to forsake majority rule. As Justice Powell explained, a legislature's abandonment of traditional criteria like contiguity and com-

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[12] The Constitution's prohibition of anti-majoritarian partisan entrenchment does not conflict with the Fourteenth and Fifteenth Amendments' ban of racial discrimination or the federal Voting Rights Act. Accordingly, no jurisdiction may justify the dilution of minority voting strength by claiming it was necessary to avoid a partisan gerrymander.

pactness, and its failure to follow fair procedures in adopting the plan, indicate that a plan's severe partisan skew was intended. *See Bandemer*, 478 U.S. at 166-67, 173 (Powell, J., concurring in part and dissenting in part).[13]

Second, it would be best for legislatures, not courts, to develop alternatives to unconstitutional systems of entrenched party control. Accordingly, the preferred remedy when redistrictings are struck down should be to ask the legislature to go back to the drawing board. Only when exigencies of time or legislative recalcitrance demand it should courts order specific redistricting plans adopted. *See Abrams v. Johnson*, 521 U.S. 74, 79 (1997) ("When faced with the necessity of drawing district lines by judicial order, a court, as a general rule, should be guided by the legislative policies underlying the existing plan, to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act.").

Third, the entrenchment of a favored party irrespective of a majority vote is not the only circumstance in which a partisan gerrymander could be unconstitutional. For example, a system could be rigged to give one party a "winner's bonus" of a supermajority of seats when it won a bare majority of votes, but to deny a winner's bonus to competing parties under the same circumstances. The permutations, particularly when state and local legislative races are con-

[13] *Amici* do not intend to suggest their agreement with every factor that has been referred to in various Court opinions as "a traditional redistricting factor." In particular, *amici* believe that incumbent protection is not a legitimate reason for adopting a set of districts with a severely disproportionate partisan skew, and that partisan advantage clearly cannot justify a plan like Pennsylvania's without completely vitiating *Bandemer*. The pairing of incumbents in the Pennsylvania plan is objectionable not because incumbents should be protected, but because the pairing was designed to eliminate Representatives of only one party.

sidered, are numerous. We respectfully suggest that the Court indicate that this case does not exhaust the categories of unconstitutional gerrymandering, and leave it to lower courts to address other concrete factual circumstances in light of the principles announced in this case. *Cf. Brown v. Bd. of Educ. of Topeka*, 349 U.S. 294 (1955) ("*Brown II*").

Finally, certainty and repose may be even more important in this area of the law than in others. Candidates and parties, as well as voters, should be confident that a set of districts established early in the decade will endure until the next census. Ideally, courts should be able to judge whether a redistricting is constitutional when the redistricting is first adopted, rather than waiting for it to be used in one or more elections. Similarly, litigation can be more easily avoided if legislatures can evaluate a plan's lawfulness accurately before putting the plan into effect.

Courts can achieve these salutary results by using voting data from previous elections in the same way that politicians do when they draw the new lines. It was only in the 1980 census that the Census Bureau first provided states data, including voting-age population, broken down by electoral precinct. *See* Pub. L. No. 94-171 (1975). Those data, and previous election returns from each precinct, permit computers to create equipopulous districts and accurately project how the districts will "perform" for the favored party. Even before the 2002 election, any competent analyst could predict that Pennsylvania's Congressional districts would preclude a Democratic majority in the delegation unless Democrats won the statewide vote by a landslide. Voters who are discriminated against should not have to suffer through two or three unfair elections before vindicating their rights, nor should the general public have to face the uncertainty of mid-decade litigation over redistricting, when there is reliable evidence of a plan's discriminatory intent and its probable discriminatory effect from the outset.

CONCLUSION

The District Court's judgment should be reversed and the case remanded for further proceedings.

Respectfully submitted,

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Appellants,

v.

ROBERT C. JUBELIRER, *et al.*,
Appellees.

On Appeal from the United States District Court for the Middle District of Pennsylvania

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BRIEF OF *AMICI CURIAE* THE REFORM INSTITUTE, THOMAS MANN, AND NORMAN ORNSTEIN IN SUPPORT OF APPELLANTS

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INTEREST OF *AMICI CURIAE*[1]

The Reform Institute, Inc. is a not-for-profit 501(c)(3) educational organization representing a thoughtful voice of reform in debates over campaign finance and election administration. Senator John McCain serves as Chair of its Advisory Board. The Reform Institute has three main roles (1) to reduce political corruption and the appearance of corruption; (2) to promote discussion about how best to reform election registration and voting procedures in order to increase meaningful citizen participation in the democratic system; and (3) to promote and defend citizen reform initiatives that seek to open the doors of the voting process. The present case concerns whether a state legislature can redraw congressional districts so as to minimize the likelihood that a particular political party's candidates will win in the election. It directly implicates the Reform Institute's second role of increasing meaningful citizen participation in the democratic system.

Thomas E. Mann and Norman J. Ornstein are political scientists at the Brookings Institution and the American Enterprise Institute, respectively. In their 35-year careers, they have individually and jointly written extensively about Congress, elections, redistricting and American politics and government generally. Active in congressional, election, campaign finance, and other institutional reform efforts, their professional lives have been focused on the health and vibrancy of American political institutions. Their biennial book Vital Statistics on Congress is in its twelfth edition. Their joint AEI/Brookings efforts have included the Renewing Congress Project, Five Ideas for Practical

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[1] All parties consented to the filing of this *amicus* brief with the Court in writings accompanying this filing. No counsel for any party authored this brief in whole or in part and no person or entity other than *amici curiae* or counsel made any monetary contribution to its preparation or submission.

Campaign Reform, the Transition to Governing Project, the Alternatives to the Independent Counsel Project, and the Continuity of Government Commission.

SUMMARY OF ARGUMENT

The Framers envisioned the House of Representatives as a unique structure of the national government. Unlike the Senate, the President, or the courts, it was to have "an immediate dependence on, and an intimate sympathy with, the people." The Federalist No. 52, at 337 (James Madison)(Robert Scigliano ed., 2001). As John Adams put it, the body of the people's representatives should "be in miniatur[e] an exact portrait of the people at large. It should think, feel, reason, and act like them." John Adams, *Thoughts on Governance*, *in* 4 Papers of John Adams 87 (Robert J. Taylor ed., 1977). With this in mind, the Framers carefully designed the House to "bin[d] the representatives to their constituents ... [and] to extend the influence of the people over their representatives." The Federalist No. 52, at 339. They insisted on direct election "by the People of the several States," a broad franchise, regular reapportionment as among the states, and frequent elections. U.S. Const. art. I, § 2. Of these, the last was the most important, for "without the restraint of frequent elections" in the House, the Framers thought, "[a]ll [other] securities [against oligarchy] would be found very insufficient ...." The Federalist No. 57, at 367. By this device

> the House of Representatives is so constituted to support in the members an habitual recollection of their dependence on the people. Before the sentiments impressed on their minds by the mode of their elevation can be effaced by the exercise of power, they will be compelled to anticipate the moment when their power is to cease, when their exercise of it is to be reviewed, and when they must descend to the level from which they were raised; there forever to remain unless a faithful

> discharge of their trust shall have established their title to a renewal of it.

Id. Nearly every special feature of the House's design was meant to ensure that it, unlike the other primary structures of the federal government, was highly responsive to public sentiment.

Unfortunately, congressional redistricting has defeated much of the Framers' vision. High rates of incumbent reelection, declining competitiveness of congressional districts, and long periods of one-party control of the House have eroded the accountability and legitimacy of the people's chamber. The 2002 congressional elections make this point starkly. Only four challengers defeated House incumbents—the lowest number in modern American history. Norman J. Ornstein, Thomas E. Mann, & Michael J. Malbin, Vital Statistics on Congress 2003-2004 tbl. 2-10 (forthcoming 2004) (hereinafter Vital Statistics), *to be available at* http://www.aei.org; Michael J. Dubin, United States Congressional Elections, 1788-1997: The Official Results (1988); Sam Hirsch, *The United States House of Unrepresentatives: What Went Wrong in the Latest Round of Congressional Redistricting*, 2 Election L.J. 179, 182 (2003). Only 43 House incumbents, moreover, won reelection "narrowly"—defined generously as by less than 60 percent of the vote—while 338 House incumbents enjoyed very large victory margins—20 percent or more—including 78 who ran unopposed by a major party challenger. Vital Statistics, *supra*, at tbl. 2-12. In the nation's largest state, California, not a single challenger in the general election received as much as 40 percent of the vote. Hirsch, *supra*, at 182. And more than a third of all States sent to Congress *exactly* the same House delegation as before. *Id.*

These facts are particularly striking because the 2002 elections were the first held after the latest reapportionment. Historically, incumbents suffer in such elections. As their old

voters disappear and new voters replace them, incumbents usually find their seats less secure. Their new voters can have quite different interests than their previous constituents. From 1972 to 1992, in fact, House turnover averaged 45 percent higher in immediate post-reapportionment Congresses. These Congresses contained an average of 87 freshmen, while the others in this period contained only 60. *Id.* at 183. In 2002, however, only 54 freshmen were elected to the House—less than half the number elected in 1992. Vital Statistics, *supra*, at tbl. 2-7. In 2002, incumbents had a very easy ride overall. Only 35 incumbents retired (rather than the average of 48 in other recent post-reapportionment Congress); only eight lost in the primaries and only eight lost in the general election, in each case half the time to another incumbent. *Id.* This lack of competition was, moreover, peculiar to the people's chamber. On the same day that less than ten percent of House races were being decided by margins of ten percent or less, nearly half of all gubernatorial and U.S. Senate races were that close. Hirsch, *supra*, at 183. One significant difference, of course, is that no one can gerrymander a statewide district.

Current political conditions have both increased the incentives to gerrymander and exacerbated the democratic pathologies it leads to. Over the last 15 years, American politics on the national level has been subject to a striking paradox: it has become much more competitive at the macro level, when it comes to institutional control, but much less competitive at the micro level, when it comes to individual seats. Recent presidential elections have been very close and the Senate and House have been evenly or very nearly evenly divided. At the same time, the parties in the House have become much more homogeneous and ideologically polarized. Their homogeneity means that the majority party (with near unanimity on critical party matters) can dominate the House more effectively than before even with a small margin. Their polarization, on the other hand, means that the

parties feel the stakes of control are higher. It increases both the costs of losing and the benefits of winning. In an almost evenly split House, where even a small gain in seats can make all the difference, parties will struggle hard however they can for each extra seat.

This struggle, of course, can have some very positive effects. It may lead parties to field more attractive candidates, may engage party members more deeply in party activities, and may cause some voters to become more interested in politics. It has also had, however, some very bad effects. In particular, it has led parties to draw congressional districts to give their House candidates an artificial competitive advantage. The strategies are as simple as the stakes are high. In states in which the redistricting power is divided, bipartisan gerrymanders are constructed to create ever safer districts while maintaining the partisan status quo. In states with unified party control, the party controlling the redistricting tries to pack as many of its opponent's voters into as few districts as possible, thereby giving its opponent victories in only a few districts but making every victory a landslide. At the same time, the controlling party tries to create comfortably safe, but less than "landslide" safe, districts for its own candidates everywhere else. That way it can send more of its candidates to the House of Representatives. Under either strategy, the overall result is a diminishing number of seats that are in any real or meaningful way competitive in general elections.

This practice undermines the unique role of the House in several ways. First, it weakens the responsiveness and accountability of each elected representative to voters in the district. As the Framers keenly understood, a representative who does not face the regular and effective discipline of the voters cannot be counted on to reflect their views. Second, it makes the House unrepresentative of the people overall. Making individual seats safe for one party means that the

House fails to respond well to changes in underlying public sentiment as the Framers intended. Unless voters' attitudes change dramatically, control of the House will not change at all even though it and the country are nearly evenly divided. Even worse, voters' attitudes can change sharply—leading, say, to a national swing of five percent—and see little impact on House elections when only a tiny fraction of seats are within a five percent margin of change. Third, it can effectively skew representation away from an overall constituency. If the only meaningful electoral challenge that can take place is in a party primary, a representative may be acutely responsive to the faction of ideological activists who regularly populate party primaries and largely unresponsive to the views of the average voter in the district. Centrist voters of both parties are thus artificially silenced and the House as a whole becomes even more polarized than before, which, in turn, encourages further partisan gerrymandering. The result is a vicious cycle leading to ever more frequent and more severe gerrymandering and worsening polarization in the House.

All this, of course, undermines the special role the Framers designed for the House of Representatives in our national government. Instead of ensuring that representatives have "an immediate dependence on, and an intimate sympathy with, the people," partisan gerrymandering frees them from that dependence. It allows them greater freedom to pursue others' interests and to "think, feel, reason, and act [*un*]like" the people they represent. The more electoral districts are designed to deaden real political competition, in other words, the less effectively elections operate to discipline the people's representatives and ensure that the House as a whole remains truly representative.

ARGUMENT

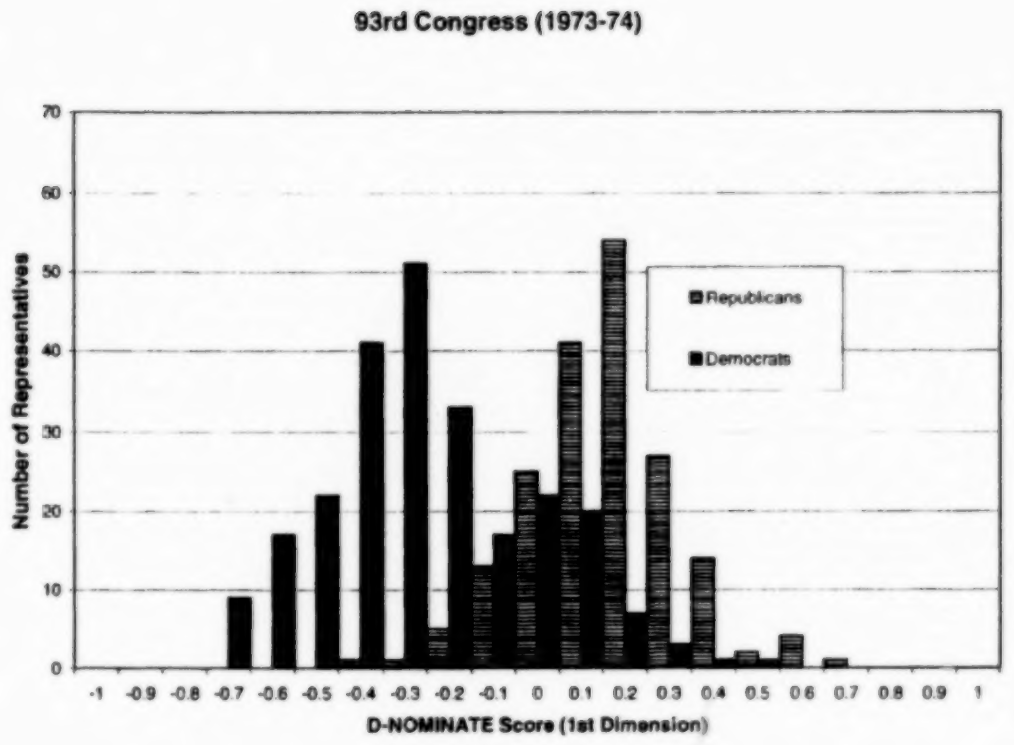
I. UNPRECEDENTED PARITY BETWEEN THE TWO MAJOR PARTIES ON THE NATIONAL LEVEL HAS CREATED GREAT PRESSURE TO MAKE INDIVIDUAL HOUSE DISTRICTS SAFE FOR ONE MAJOR POLITICAL PARTY OR THE OTHER.

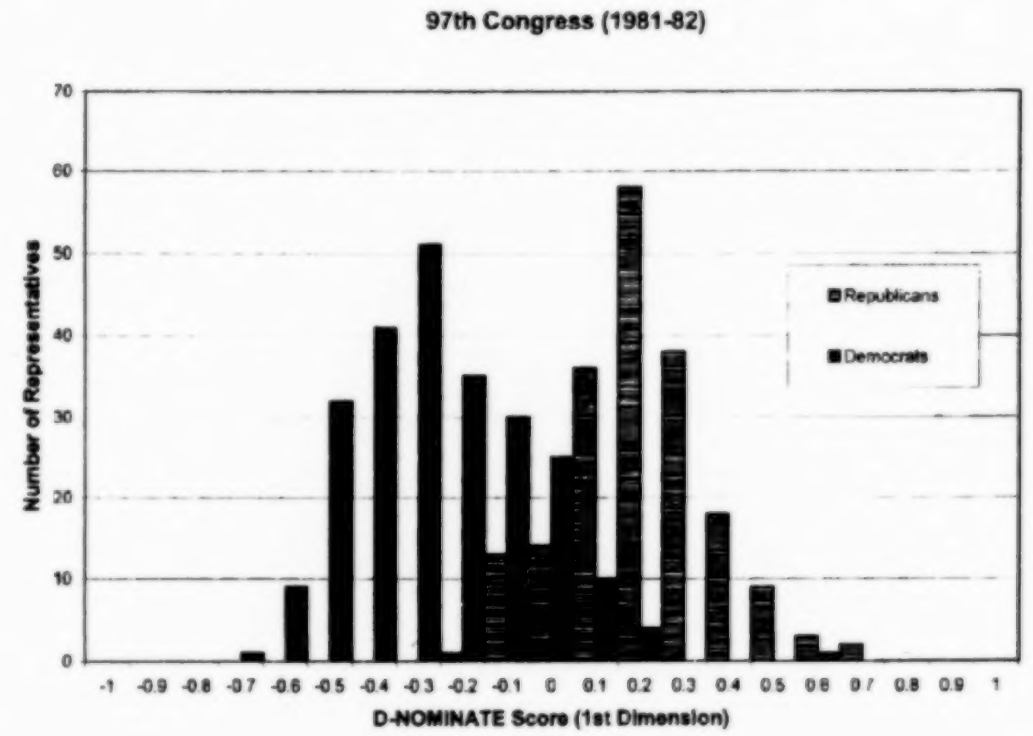
A. The Near Equal Division of the House of Representatives, Its Widening Ideological Polarization, and the Increasing Homogeneity of Each of the Two Major Parties Mean That a Small Change in House Seats Matters Much More Than Before.

As the 2000 elections showed, the two major parties enjoy nearly equal popular support across the nation as a whole. While one presidential candidate won a plurality of votes, the other won a victory in the Electoral College; the Senate became split exactly in two; and the majority party's control of the House stood on an extremely slim margin (221-212). Gary C. Jacobson, *A House and Senate Divided: The Clinton Legacy and the Congressional Elections of 2000*, 116 Pol. Sci. Q. 5 (2001). In terms of popular support, the two major parties were more evenly matched than anytime since the nineteenth century. *Id.* at 6. And although the midterm elections of 2002 increased the size of the ruling party's margin in the House by six seats, that margin still stood near its modern low. The 2002 elections culminated a decade-long trend. The *largest* margin of majority in the House since 1992 was less than one-third the historical average from 1960 until 1992, and the average margin for the last ten years is barely one-sixth of the average for the preceding period. *See* Brief of Bernard Grofman and Gary C. Jacobson as *Amici Curiae* at 4 fig. 1. By any standard—historical or absolute—the margin of control in the House has been astonishingly narrow over the past ten years.

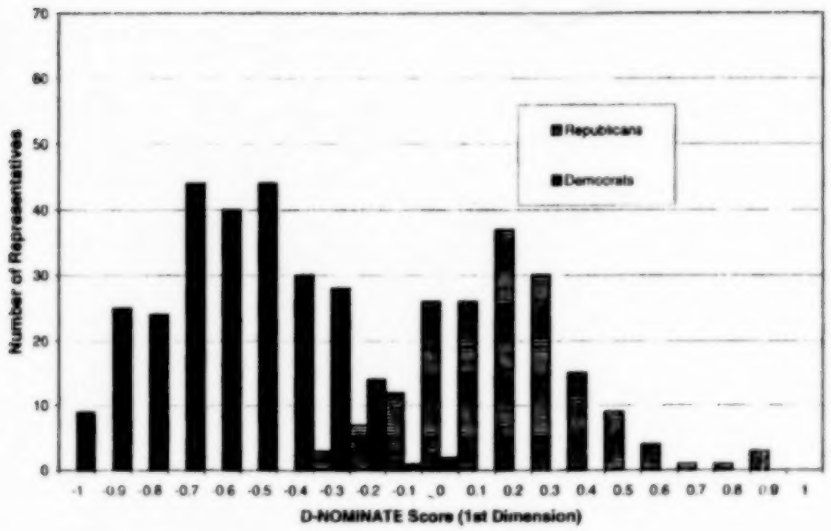
At first that might appear a good thing. After all, small margins of control might be thought to force the parties to cooperate, solve problems together, and allow some of their more centrist representatives a greater voice. But for two reasons exactly the opposite is true. First, the major parties in the House have become increasingly polarized. Gary C. Jacobson, The Politics of Congressional Elections 242-50 (5th ed. 2001). Poole-Rosenthal DW-Nominate Scores, a widely accepted measure of congressional ideology, show how markedly the parties have diverged over the last thirty years. *See* Keith T. Poole & Howard Rosenthal, Congress: A Political-Economic History of Roll Call Voting chs. 2-4 and App. A (1997)(explaining and justifying measure). These scores place each member of Congress on a liberal-conservative scale from -1.0 (liberal) to 1.0 (conservative) on the basis of nonunanimous roll call votes. From the early 1970s on, the average scores for members of the Democratic and Republican parties have steadily and radically diverged. *See* Brief of Bernard Grofman and Gary C. Jacobson as *Amici Curiae* at 11 fig. 6. In fact, the score gap nearly doubled over that time and now amounts to over .86 points on just a 2-point scale. *Id.* at 9.

Second, the major parties in the House have become much more homogeneous. There is now much less divergence than before *within* each party. As comparison of the figures below show, not only have both parties in the House shifted more towards the extremes, leading to less overlap in their policy positions, but each party has a much more cohesive focus than before.

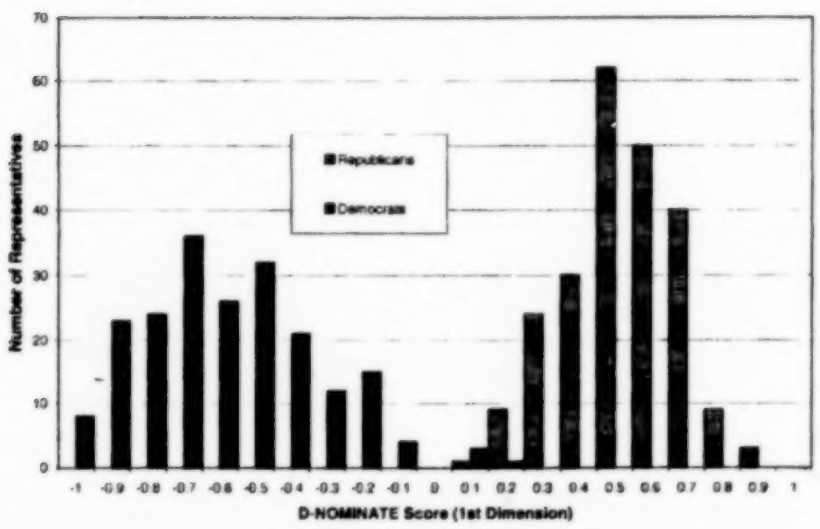




101st Congress (1989-90)



105th Congress (1997-98)



Jacobson, The Politics of Congressional Elections, *supra*, at 246-47 figs. 8-4A-4D. In other words, the two major parties in the House have become increasingly discrete and insular. On policy, they are both more distant from each other and more internally homogeneous than before.

In such a world, small differences matter. The vanishingly narrow margins of control over the past ten years mean that a gain of just a few seats can completely switch party control of the House. From the 1970s through the early 1990s, for example, changes of up to 25 seats in any election would have made no difference to which party controlled the House. After 1992, however, a difference of as few as six seats and at most 13 would have made all the difference. The increasing homogeneity of each party over that same time, moreover, means that the party in control now has a greater focus and has to worry less about its individual members deviating from its preferred policy positions. The increasing polarization sharply raises the stakes of House control for each side. Since larger policy differences separate the parties, which one controls has a greater effect on legislative policy outcomes. In the 1970s, when less distance separated the two parties and they were less homogeneous, which one controlled the House mattered less because the policy outcomes sought and produced under one party would have been more similar to those sought and produced under the other. Once the parties' policy preferences markedly diverged and party members in the House voted more in lockstep than before, however, the policy stakes greatly increased. Because of their ideological polarization, each party wants more extreme policies than before and, because of homogenization, the party in control finds it much easier to achieve its preferred policies even with a small margin. Thus, the stakes of redistricting have grown in two mutually reinforcing ways: narrow margins of control have meant that differences in just a few seats can change which party controls the House and a difference in party control makes a much larger difference in legislative policy outcomes. Shifting fewer seats produces larger legislative payoffs than before.

The parties understand this. In recent years, congressional redistricting battles in the states have become nastier and more pitched. The stakes are so high, in fact, that national

party leaders from Washington have often led the battles. Most recently, for example, the Majority Leader of the United States House of Representatives has pushed Texas state legislators to draw a new congressional map even though the existing plan is only one election old and the courts have approved it. *See Balderas v. Texas*, 536 U.S. 919 (2002) (affirming unpublished opinion of 3-judge court). His reason, stated publicly, was clear and simple: "I'm the majority leader, and we want more seats." David M. Halbfinger, *Across U.S., Redistricting as a Never-Ending Battle*, N.Y. Times A1 (July 1, 2003). The attempt has produced such bitterness, however, that state representatives of the minority party have repeatedly decamped the state in order to deprive one house or the other of the state legislature the two-thirds quorum necessary to pass a new plan. The senate representatives are currently sojourning in New Mexico. *Texas Democrats Are Fined by G.O.P.*, N.Y. Times A9 (Aug. 15, 2003)("Eleven Democrats have stayed at a hotel in Albuquerque since July 29, keeping the Texas Senate Republican majority from obtaining the quorum it needs to consider a Republican redistricting plan.").

In response, not only has the Texas Department of Public Security sought to arrest and return the minority party representatives to the statehouse but representatives of the United States House Majority Leader have pressed several different instrumentalities of the federal government, including the Department of Justice and the Federal Aviation Administration, to help in the effort. Counsel to the United States House Majority Leader, for example, called the Department of Justice and asked if it had the legal authority to assist in forcing the return of the minority party state legislators to Texas. Office of the Inspector General, Department of Justice, An Investigation of the Department of Justice's Actions in Connection with the Search for Absent Texas Legislators 4-6 (Aug. 12, 2003) [hereinafter DOJ Investigation], *available at* http://www.usdoj.gov/oig/special/

03-08a/final.pdf. Late the day before a senior staffer for the United States Majority Leader called the Federal Aviation Administration's Administrator for Government & Industry Affairs asking for the current and past location of the plane of the former Speaker of the Texas House, which the staffer hoped might lead to the missing members. Statement of Hon. Kenneth M. Mead, Inspector General, U.S. Department of Transportation, Federal Aviation Administration Efforts to Locate Aircraft N711RD (July 15, 2003)(testimony to House Committee on Transportation and Infrastructure), *available at* http://www.oig.dot.gov/show_pdf.php?id=1127. That same day the Texas Department of Public Safety contacted the federal Air and Marine Interdiction Coordination Center (AMICC), an arm of the United States Department of Homeland Security, asking it to locate an aircraft transporting Texas state legislators. Office of Inspector General, U.S. Department of Homeland Security, Report of Investigation IN03-OIG-0662-S, at 1, *available at* http://www.dhs.gov/interweb/assetlibrary/DHS_OIG_Investigation_Texas.pdf. Employees at all three federal agencies spent time on these requests. The FAA and the AMICC gave state police officials or representatives of the United States House Majority Leader information on the location of the plane. The Department of Justice, after much internal consultation, did ultimately refuse to aid in the return of the errant Texas legislators. One Justice official aptly described the request from the U.S. Majority Leader's office as "wacko." DOJ Investigation, *supra*, at 5. So great is the pressure to gain seats that both federal and state political officials attempted to enlist the power of law enforcement and national security agencies for partisan ends. This politicization of the rules of the game severely damages the legitimacy of our democratic process.

B. The Increasing Pressure to Gain Seats Has Led to Making House Districts Uncompetitive in a Way That Favors One Party.

To gain seats through redistricting requires a party in control of the redistricting process in individual states to follow only a simple strategy: that party must make its opponent's districts as few and its own as many as possible. To minimize the number of its opponent's districts, the party in control must pack as many of its opponent's voters as possible into each district the opponent controls. This leads to the opposition party winning few districts but winning each by a landslide. To maximize the number of its own districts, by contrast, the controlling party must assign as few of its own voters to as many districts as it can while maintaining a reliable majority in each of them. This leads to the controlling party giving itself a comfortable but less sizeable margin in as many districts as possible. The strategy thus aims to make virtually every district uncompetitive and achieves its partisan ends by making the districts differentially uncompetitive for each party. By creating super-safe districts for the opposing party and merely safe districts for itself, the controlling party "wastes" minority party votes and efficiently deploys its own. Knowing that "one person, one vote" and race are virtually their only legal constraints, party strategists feel free to draw such lines.

An extreme example demonstrates these possibilities. Imagine a jurisdiction with 100 voters, four seats, and two parties, one of which claims 60 percent of the voters and the other 40 percent. If the voters are uniformly distributed across the jurisdiction, the majority party will necessarily win every seat so long as the districts are drawn contiguously. A uniform distribution of voters ensures that no matter how the jurisdiction draws its districts three majority party voters will accompany every two minority party votes. The only possible way to create a seat for the minority party would be to district noncontiguously on some basis where the voters

were not uniformly distributed by party. If party affiliation varied roughly according to economic status, for example, non-geographic districts defined by ranges of wealth could permit the minority party to capture one seat. But, of course, such districts are only a theoretical possibility in our political system.

If the state legislature had complete freedom in assigning voters to districts and knew how individual voters voted, many results are possible. It could randomly assign voters to districts, for example, in which case each of the four districts would contain roughly 60 percent majority party voters and the majority party would win every district. At the other extreme, the legislature could split all the minority party voters evenly among three arbitrary districts. In such a scheme, the minority voters would have a bare majority in the first three districts while the majority party would have nearly a 100% majority in the fourth.[2] Although the majority party would win by much more in the single district it controlled, it would lose three to one in the legislature itself. By differentially distributing party voters across districts, in other words, the legislature would be able to leverage a 40 percent party minority in the electorate into a 75 percent party majority in the legislature. At the extremes, the legislature could lock the minority party out completely, as in the random districts, or it could lock the majority party into a 25 percent minority position. If the parties were completely polarized and homogeneous, moreover, a 25 percent minority

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[2] A state legislature would usually, of course, be interested in boosting the representation of the majority party since the majority party would usually control it. If the present minority party had previously enjoyed control of the legislature and gerrymandered state legislative districts to favor its own candidates, however, it could still control the legislative process despite its minority status and then draw lines to give a majority of a state's congressional seats to minority party candidates. Gerrymandering on the state level can thus induce and compound democratic pathology at the level of the House.

would be completely powerless in the legislature. The 75 percent majority would always get its way. At either extreme and in most places in between, for that matter, the legislature's ultimate policy outcomes would reflect less the underlying policy preferences of voters, which would not vary, than how voters were assigned to districts. In a real sense, the people's representatives would reflect the districts of the people rather than the people of the districts.

A party, of course, will usually want to reach no further than it can reliably grasp. Otherwise, a small shift in public opinion can cause its gerrymandering to backfire. *See* Bruce Cain, The Reapportionment Puzzle 151-59 (1984)(explaining how a party that cuts its margins too thin can lose many seats if voter support changes). To prevent this, a party in control of redistricting can be expected to give itself more than a thin margin of victory in its districts and may sacrifice a seat or two in order to ensure that it will continue to dominate its remaining districts if voter sentiment shifts somewhat in the later years of the reapportionment cycle. This strategy deadens competition in nearly every district. The party-victim of the gerrymander will enjoy wins in as few districts as possible but in each by a landslide while the party in control of the gerrymander will enjoy wins in a disproportionately large number of districts but by smaller margins. Few, if any, districts will remain in true competition.

Examples as extreme as those in the above hypotheticals are admittedly rare. In some states, redistricting power is divided between the parties, often producing bipartisan gerrymanders which maintain the partisan status quo while creating safer seats for both parties. Even with unified party control, legislatures do not have complete flexibility in assigning voters to districts. If only to avoid public backlash, they must pay some respect to geography and often as well to political subdivisions and communities of interests. Looking to these other concerns will temper what a state legislature can do, if only a little. More importantly, until recently state

legislatures could not so effectively gerrymander because in many instances they could not accurately predict voting behavior. Above all else, partisan gerrymandering depends on the ability to predict how different groupings of people will vote. If a legislature cannot tell whether drawing districts one way rather than another will help or hurt a particular party, it will not be tempted to gerrymander. As voting behavior becomes predictable, however, partisan gerrymandering becomes possible, powerful, and common.

Although technology has improved redistricters' ability to predict the partisan effects of various plans, the greatest improvement in prediction has come from changes in voting behavior itself. District-level voting behavior is more consistent now than it has been for many years. In the 2002 midterm congressional elections, in fact, fewer congressional districts had split preferences—voting for candidates of different parties for the House and presidency—than in any election in over 50 years. *See* Gary C. Jacobson, *Terror, Terrain, and Turnout: Explaining the 2002 Midterm Elections*, 118 Pol. Sci. Q. 1, 12 (2003). In only 62 House districts did voters not elect a representative from the same party for which they voted for President two years before. *Id.* This increasing district-level consistency parallels a trend in individual voting behavior: the decline of split-ticket voting. From 1972 to 1996 the percentage of voters splitting tickets between presidential and senate candidates has dropped from 28 to 15 percent. Gary C. Jacobson, The Politics of Congressional Elections 149 fig. 6-2 (5th ed. 2001). Such increased individual consistency allows those redistricting to predict much more accurately the partisan effects of their line-drawing. By understanding how individual precincts voted in the last presidential election, they can more reliably predict how those precincts will vote in future congressional elections and use this information to strategically aggregate precincts to provide majorities of the "right" size to each party.

II. ADVANTAGING ONE PARTY BY MAKING HOUSE DISTRICTS UNCOMPETITIVE UNDERMINES THE UNIQUE ROLE OF THE HOUSE OF REPRESENTATIVES IN AMERICAN GOVERNMENT.

A. By Deadening Competition in House Districts, Partisan Gerrymandering Dangerously Weakens the Responsiveness and Accountability of Representatives to Voters in Their Districts.

Partisan gerrymandering artificially advantages and disadvantages parties by deadening competition in as many districts as possible. Empirical research proves how much this harms the democratic process. As one leading political scientist describes its effects, the latest round of redistricting gave

> marginal incumbents of both parties . . . safer districts. Redistricting gave eight Democratic incumbents who had been representing Bush-majority districts[, districts in which Republican George W. Bush had won the popular vote in the 2000 presidential election,] new Gore-majority districts,[districts in which Democrat Al Gore had won the popular vote in that election]; only one suffered the contrary switch . . . . All thirteen of the switches involving Republican incumbents were from Gore- to Bush-majority districts. Of the twenty-five districts Republicans had won in 2000 with less than 55 percent of the major party vote, eighteen were strengthened by increasing the proportion of Bush voters; of the nineteen similarly marginal Democratic districts, fifteen were given a larger share of Gore voters. Thus, three quarters of the marginal districts were made safer by redistricting, half of them by more than [two] percentage points (in presidential vote share). If analysis is confined to districts with marginal incumbents who sought reelection in 2002, thirty-two of their forty districts (80 percent) were made safer by redistricting.

Gary C. Jacobson, *Terror, Terrain, and Turnout*, *supra*, at 10-11. In individual states, the effects could be even more extreme. Gerrymandering in California after the last census, for example, left not a single one of the state's 53 House districts competitive. *Id.* at 10.

Long term trends exacerbate this problem. Since at least the mid-twentieth century, competitiveness in House districts has markedly declined. In the decade of elections after the 1960s reapportionment, for example, an average of 73 seats were won with less than 55 percent of the major party vote. In the decade of elections after the 1990s reapportionment, by contrast, that figure fell by more than 10 percent to 65 seats. *See* Brief of Bernard Grofman and Gary C. Jacobson as *Amici Curiae* at 6 fig. 2. More ominously, elections immediately following reapportionment have in recent years nearly always (the 1972 Nixon-McGovern election is the only exception) shown an increase in district competitiveness, but not in 2002. As one commentator has summed up the results appearing in the following table,

> elections held in the immediate aftermath of reapportionment . . . have generated particularly large freshman classes and have returned fewer incumbents than have other elections. On average, more incumbents retire from the House in post-reapportionment election cycles, more are defeated in primaries, more lose in the November general elections, and fewer win landside reelections. . . . [O]n average, since 1972, membership turnover has been about 45% larger in post-reapportionment Congresses, with 87 freshmen rather than 60. If anything, this tendency for greater turnover in post-redistricting election cycles had appeared to be increasing, as the 1992 elections had generated a freshman class with 110 members.

Comparison of the 2002 Election With Elections from 1972 to 2000

Category	*Average "Normal" Election (1974-1980, 1984-1990, 1994-2000)*	*Average Post-Reapportionment Election (1972, 1982, 1992)*	*2002 Election*
Incumbents reelected	375	348	381
By >20 points	297	261	338
By <20 points	78	87	43
Incumbents defeated	21	35	16
In the primary	3	13	8
In the general	18	22	8
Incumbent retirements	37	48	35
New members	60	87	54

Hirsch, *supra*, at 183 & tbl. 1. In the 2002 election, however, the opposite happened. Only 54 freshmen were elected—fewer than average for an ordinary election, far fewer than the average for post-reapportionment elections, and less than half the figure for 1992. This lack of competitiveness was, moreover, peculiar to House elections in 2002. While only approximately nine percent of House seats were decided by margins of ten percent or less, roughly half of U.S. Senate and gubernatorial elections held on that same day were that close. *Id.* at 183.

This fact bodes ill for the rest of the current reapportionment cycle. Since competitiveness typically declines over the course of each cycle, House elections will, if they follow history, become increasingly uncompetitive over the coming decade. In fact, since the 1960s, district competitiveness has on average declined nearly 25 percent from the beginning to the end of each reapportionment cycle. If that historical falloff rate continues—and intercensus districting, like that being tried by Texas and already accomplished by Colorado, which aims to deaden competition in even more districts, can only make it worse—by the end of this redistricting cycle only 36 House seats will be competitive, i.e., won by fewer than 55 percent of the major party vote.[3]

Deadened competition has both individual and aggregate effects. On the individual level, it means that representatives fear less the regular judgment of the voters. The less competitive districts are, the less representatives will fear defeat at the polls and the less responsive they will be to general election voters. A representative who squeaks by will be very sensitive to what constituents want; a representative assured of a landslide less so. Uncompetitive districts, then, weaken the structures of accountability that the Framers believed made members of the House truly responsive to—and thus truly representative of—the people. They substitute responsiveness to party activists and donors for the rigorous discipline that the Framers intended frequent elections to place on members of the House.

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[3] In the 1962, 1972, 1982, and 1992 elections, the first held in those reapportionment cycles, a total of 279 seats were won within this margin. In the 1970, 1980, 1990, and 2000 elections, by contrast, the last held in these cycles, 212 seats were. *See* Brief of Bernard Grofman and Gary C. Jacobson as *Amici Curiae* at 6 fig.2 (supplying figures for each year). The average beginning-to-end falloff rate in this period is thus 24 percent. Applying this figure to the 47 House seats decided within this margin in the 2002 election predicts a decline to only 36 competitive seats in the 2010 elections.

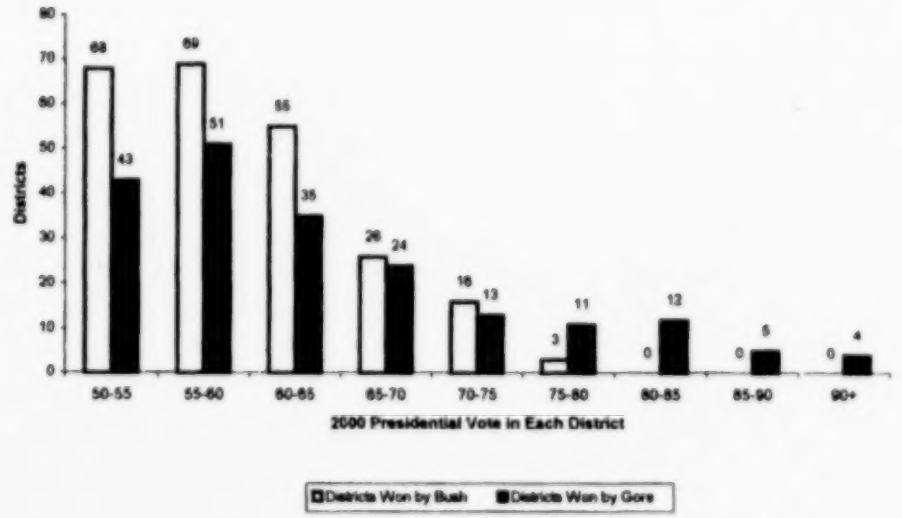
On the aggregate level, deadened competition means that the House of Representatives as a whole will not well reflect changes in sentiment in the voters. Because so few districts can realistically change parties, the House as a whole will fail to track shifts in underlying popular opinion. A national swing of five percent in voter opinion—a sea change in most elections—will change very few seats in the current House of Representatives. Gerrymandering thus creates a kind of inertia arresting the House's dynamic process. It makes it less certain that votes in the chamber will reflect shifts in popular opinion and thus frustrates change and creates undemocratic slippage between the people and their government.

B. By Artificially Advantaging One Political Party over Another, Partisan Gerrymandering Can Substantively Skew Public Policy for the Duration of the Reapportionment Cycle.

Although partisan gerrymandering deadens competition within individual districts, that is its method, not its aim. Its aim, of course, is to give one of the major parties an advantage over the other in Congress. Comparing the major parties' shares of the 2000 presidential vote in the pre- and post-reapportionment House districts demonstrates how thoroughly current political gerrymandering has achieved this. As Gary Jacobson has explained, "The Bush-Gore vote division provides an excellent approximation of district partisanship. Short-term forces were evenly balanced in 2000, and party line voting was the highest in decades, hence both the national and district-level vote reflected the underlying partisan balance with unusual accuracy." Gary C. Jacobson, *Terror, Terrain, and Turnout*, *supra*, at 9. In other words, districts won by Democratic candidate Al Gore are generally Democratic while districts won by Republican candidate George W. Bush are generally Republican. As the

following figure shows starkly, the post-census redistrictings helped make many districts comfortably but leanly Republican and many other districts landslide Democratic. The last cycle of redistricting, in other words, made the parties' seats differentially safe in a way that gave one side an artificial edge in the House.

Distribution of Bush Districts and Gore Districts in the 2002 Plans



Hirsch, *supra*, at 197. In fact, all the districts in the country with party landslides of over 80 percent were won by a single party. In some states, of course, Democratic-controlled redistrictings artificially plumped the Democrats' share of the state congressional delegation; in others, Republican-controlled redistrictings artificially plumped the Republicans'. Both sides are guilty of such advantage-taking because the stakes are simply too high. In the 1980s, California Democrats were among the most notorious offenders. *See Badham v. Eu*, 694 F. Supp. 664 (N.D. Calif. 1988)(3-judge court), *aff'd*, 489 U.S. 1024 (1989). In 2003, the Texas Republicans are trying to be. On balance, however, as the figure above shows, the

post 2000 census plans advantaged the Republicans. The net effect was to increase the number of Republican districts by nine, from 228 to 237, Gary C. Jacobson, *Terror, Terrain, and Turnout*, *supra*, at 9, and perhaps give it control of the House for the remainder of the decade no matter what happens politically in the nation.

Increasingly consistent and predictable voting behavior on the district level, moreover, means that there is little chance that partisan gerrymanders will become self-defeating. Although some have speculated that partisan gerrymandering is a self-limiting enterprise, *see* Cain, *supra*, at 151-59 (arguing that majority parties will be tempted to cut their margins too thin in order to gain as many seats as possible and will be thrown out of power by moderate shifts in voter opinion), evidence from the last redistricting suggests less tradeoff between partisan gains and safe seats. Indeed, the more reliably voter behavior can be predicted, the smaller the margins of victory redistricters can employ without having to worry that their plans will later backfire. Furthermore, the new-found eagerness of some state legislatures, like Texas and Colorado, to redistrict between censuses in order to give the majority party's congressional candidates further advantage—actions unprecedented since the reapportionment revolution began in the 1960s—shows that legislatures can recalibrate plans to ensure they never backfire. If a legislature finds that it cut the majority's party's margins in safe districts too thin in its efforts to capture many seats, it can—if the same party still controls the legislature—simply fatten the margins a bit through periodic fine-tuning.

C. Partisan Gerrymandering Artificially Increases Ideological Polarization in the House.

By making individual districts uncompetitive, partisan gerrymandering frustrates the representation of centrist views in the House. Safe districts are drawn to be either more conservative or more liberal than a non-gerrymandered

district would be; their average voter is intended to be reliably off the overall median. Artificially skewing districts in this way is what ensures the election of candidates from particular parties. But that makes it less likely that candidates reflecting the views of these median voters will be elected anywhere. In advantaging one political party, then, partisan gerrymandering not only (1) disadvantages the other major political party and (2) makes districts uncompetitive, but also (3) makes more difficult the representation of views from the center.

Another feature of gerrymandering exacerbates this problem. Deadening competition between the major parties shifts any real political competition in the district into one party's primary, where ideological activists dominate. David Brady & Morris Fiorina, *Congress in the Era of the Permanent Campaign*, *in* The Permanent Campaign and Its Future 134, 135-36 (2000). Centrist candidates of both parties have trouble surviving in safe districts because in the primaries they must appeal to a group of voters representative neither of the district as a whole nor of even the party as a whole but only of the majority party's most intense members. More sharply ideological candidates appeal to this primary electorate. Democratic primary voters vote for more left-leaning candidates than the average Democrat, let alone the average voter, would and Republican primary voters vote for more right-leaning candidates than the average Republican or average voter would. As a result, districts elect candidates more extreme than the voters and the House has become bipolar even though the country has stayed largely in the middle. Making districts safe thus silences the vital center. Unlike the Framers' vision, a gerrymandered House reflects not popular sentiment in all its diversity but the sentiment of one extreme or the other in districts across the country. And that is not the worst. Just as polarization within the House is one of the primary effects of partisan gerrymandering, it is also one of the primary causes. As discussed previously, *supra*, at 11, polarization of a nearly evenly split House

greatly raises the stakes of redistricting and so increases the incentives to gerrymander, which in turn leads to further polarization in the House. Far from limiting itself, under these conditions, partisan gerrymandering is self-intensifying. Polarization and partisan gerrymandering form a vicious circle where increases in one increase the likelihood of the other. Together they ensure the defeat of the Framers' clear vision of the House.

CONCLUSION

Amici agree with Appellants' arguments on the law. For the reasons stated in Appellants' brief on the merits and for the reasons stated here, Amici stongly believe that this Court should develop workable standards to discipline egregious forms of partisan gerrymandering. According, Amici respectfully urge this Court to reverse the judgment of the district court and remand the case for further proceedings.

Respectfully submitted,

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IN THE
Supreme Court of the United States

RICHARD VIETH, *et al.*,

Appellants,

v.

ROBERT C. JUBELIRER AND JOHN M. PERZEL, *et al.*

Appellees.

On Appeal from the United States District Court
for the Middle District of Pennsylvania

AMICUS BRIEF OF PUBLIC CITIZEN, COMMON CAUSE, DEMOCRACY 21 AND CENTER FOR VOTING AND DEMOCRACY IN SUPPORT OF APPELLANTS

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QUESTION PRESENTED

Whether a State presumptively violates the Equal Protection Clause when it subordinates all traditional, neutral districting principles to the overarching goal of drawing a congressional redistricting map that achieves maximum partisan advantage for members of one political party.

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INTERESTS OF AMICI CURIAE[1]

Public Citizen, Inc., is a non-profit advocacy group with more than 145,000 members nationwide. It appears before Congress, administrative agencies, and the courts on a wide range of issues. Public Citizen has a longstanding interest in the fairness of the electoral process. As a result it has participated in cases concerning campaign finance reform, *see, e.g.*, *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377 (2000), candidate free speech, *see, e.g., Republican Party of Minnesota v. White*, 122 S. Ct. 2528 (2002), and third party ballot access, *see, e.g., Twin Cities Area New Party v. McKenna*, 73 F.3d 196 (8th Cir. 1996).

Common Cause is a non-profit citizen action organization with approximately 200,000 members and supporters across the United States. Common Cause promotes, on a non-partisan basis, its members' interests in open, honest and accountable government and political representation, and it seeks to achieve this objective by making government more responsive to citizens through government and electoral reform. Common Cause has long worked for reform of the redistricting process by supporting both state and federal legislative efforts, and state ballot initiatives, designed to make the redistricting

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[1] Letters of consent to the filing of this brief from both parties have been filed with the Clerk. This brief was not authored in whole or in part by counsel for a party, and no person or entity other than amici curiae, their members, or their counsel made a monetary contribution to the preparation or submission of the brief.

process less susceptible to manipulation for purely partisan motives. Common Cause participated as an amicus curiae in *Davis v. Bandemer*, 478 U.S. 109 (1986).

The Center for Voting and Democracy is a non-partisan, non-profit corporation incorporated for educational purposes. The Center researches and distributes information on the impact of electoral structures on voter participation and representation. Since 1995 the Center has released bi-annual reports about U.S. congressional elections that provide information on competitiveness, representation and voter turnout. Since 1998 it has released bi-annual reports that project winners in most U.S. House of Representative races based primarily on the partisan balance of districts. It has a 50-state on-line guide to redistricting. *See* www.fairvote.org. The Center has been active in encouraging government officials, judges and the public to explore alternatives to current approaches to territorial districting.

Democracy 21 is a non-profit, non-partisan public policy organization that works to eliminate the undue influence of big money in American politics and to ensure the fairness and integrity of our democracy. Democracy 21 supports campaign finance and other political reforms. It conducts public education efforts to accomplish these goals, participates in litigation involving the constitutionality and interpretation of campaign finance laws and other political reforms, and engages in efforts to help ensure that political reform laws are effectively and properly enforced and implemented.

STATEMENT OF THE CASE

Pennsylvania redrew its congressional districts in response to the 2000 census, which required reducing its congressional delegation to 19 members from 21. J.S. App. 14a. Republicans, who were in the majority in both houses of the Pennsylvania General Assembly, altered district lines in a manner designed to force several Democratic incumbents to run against one another and ensure that Republican candidates would win the majority of congressional seats in that State even when Republican candidates receive less than half of the vote for Congress state-wide. *Id.* at 15a -17a.

The population of Pennsylvania is evenly divided between the two major political parties. In the November 2000 election—the last to be held under the 1992 districting plan—Pennsylvanians elected eleven Republicans and ten Democrats to represent them in Congress. J.S. App. 17a. In those 21 Congressional races, Democrats obtained 50.6 percent of the vote, Republicans 49.4 percent. *Id.* at 137a. The five statewide races in 2000 were even more closely divided: Democratic candidates won 50.1 percent of the vote to Republicans' 49.9 percent. *Id.*

Even though Republicans and Democrats are near parity in Pennsylvania, the General Assembly's 2002 redistricting plan ensures that Republicans will dominate the Pennsylvania congressional delegation by a margin of at least 12-7. *See* J.S. App. 137a-138a. To achieve this

outcome, the plan's Republican authors ignored traditional districting principles by splitting precincts, municipalities and counties. In total, the plan at issue divides 29 counties and 81 municipalities to achieve its highly partisan result. *Id.* at 150a.

On January 11, 2002, Appellants Richard Vieth, Norma Jean Vieth, and Susan Furey filed this case in federal court challenging the Pennsylvania Congressional redistricting. Appellants claimed that the Republican redistricting plan ("Act 1") was an extreme political gerrymander that deprived Pennsylvania's Democratic voters of their rights under the Equal Protection Clause and violated Article I of the Constitution by consistently frustrating the will of the majority of voters over the course of the next decade. J.S. App. 139a-144a.

A three-judge district court granted Pennsylvania's motion to dismiss the Appellants' political gerrymandering claims. The Court held that Appellants had met only the first prong of the two-pronged test for analyzing political gerrymandering claims under this Court's decision in *Davis v. Bandemer*, 478 U.S. 109 (1986). The district court agreed that Appellants' allegations that the Pennsylvania Republicans had "prevented all Democratic input on Act 1 in order to establish a Republican supermajority in Pennsylvania's congressional caucus" were sufficient to establish "discriminatory intent." J.S. App. 32a-33a. However, the district court dismissed Appellants' equal protection claim on the ground that they had not demonstrated that they would suffer a sufficient

discriminatory effect from the partisan gerrymandering.

According to the district court's reading of *Bandemer*, Appellants could not prevail unless they showed not only extreme partisan gerrymandering, but also that they would be "completely shut out of the political process." J.S. App. 33a. Because the Appellants could not demonstrate that they would be prevented from "registering to vote; organizing with other like-minded voters; raising funds on behalf of candidates; voting; campaigning, or speaking out on matters of public concern," the district court concluded that Pennsylvania's lopsided redistricting was not constitutionally suspect. *Id.* at 39a. The district court did not address Appellants' separate claim that the Pennsylvania General Assembly transgressed the limits of Article I of the Constitution by enacting such a politically biased redistricting plan.

However, Appellants did prevail on their "one person, one vote" claim by demonstrating that Act 1's population deviation was not justified by any neutral redistricting policy. In response, the General Assembly enacted a second plan, Act 34, which addressed the population deviation problems in Act 1. J.S. App. 3a. In most respects, Act 34 is virtually identical to Act 1: each of the new Act 34 districts has at least 97.8 percent of the same population as in the map that constituted Act 1. *Id.* at 9a. The Act divides even more counties and municipalities than had been split apart in Act 1. As the district court stated, "[d]espite an opportunity to improve upon the numerous deficiencies of Act I, Defendants have

returned to this court with essentially the same map." *Id.* at 9a n.3.

As the November 2002 elections approached, the district court stayed its earlier decision and the election was conducted under Act 1. All but one of the Republican incumbents won re-election by more than 14 percentage points. Republicans also won two newly created open seats. Three Democratic incumbents lost, creating a 12-7 Republican advantage in a state that, based on voter registration, should have sent something close to an evenly divided delegation to Congress in 2002.

On January 24, 2003, the District Court approved Act 34, concluding that it remedied the population disparities in Act 1 and satisfied the one person, one vote requirement. J.S. App. 12a. The District Court did not revisit its earlier conclusion that Appellants had failed to demonstrate a violation of the Equal Protection Clause. Nor did the District Court discuss Appellants' Article I claim.

SUMMARY OF ARGUMENT

In *Davis v. Bandemer*, 478 U.S. 109 (1986), this Court held that there are constitutional limits on the legislature's ability to divide up state legislative districts on partisan grounds. Dividing legislative districts for political gain violates the Equal Protection Clause, which prohibits "intentional discrimination against an identifiable political group" that has "an actual discriminatory effect on that group." *Bandemer*, 478 U.S. at 127. *Bandemer* established that a redistricting plan is unconstitutional if it excessively manipulates the electoral system to favor one party's voters over another. 478 U.S. at 119-127. Contrary to the district court's view, Appellants are not required to show complete exclusion from the political process to prevail. Because Appellants demonstrated that the General Assembly intentionally redrew districts so as to heavily disadvantage Democrats, they have met their burden under *Bandemer*.

We also write to ensure that this Court does not foreclose future attacks on *bipartisan* gerrymandering, which is equally destructive to the democratic process. Although *Bandemer*, like this case, concerned partisan gerrymandering that advantages one party over the other, the Equal Protection Clause is just as fully implicated when the two major political parties act in unison to divvy up the electorate between them to ensure that each has a number of "safe" districts. In that situation, registered independents with centrist views are the clear losers because they are deprived of their potential power as

swing voters to choose between major party candidates. Challengers to incumbents and third party voters and candidates are also disadvantaged when the two major political parties create safe seats for themselves. Thus, like partisan gerrymandering, bipartisan gerrymandering violates the Constitution's Equal Protection Clause by intentionally discriminating against identifiable groups and diminishing those groups' political power.

ARGUMENT

POLITICAL GERRYMANDERING, WHETHER PARTISAN OR BIPARTISAN, VIOLATES THE EQUAL PROTECTION CLAUSE.

Congressional elections are becoming less competitive every year. In 2002, over 80 percent of the U.S. House of Representatives races were won by landslide margins of at least 20 percent. Overall, in only one out of ten races was the margin less than ten percent. Thus, over ninety percent of Americans live in congressional districts that are essentially one-party monopolies. *See* Center for Voting and Democracy, "Overview: Dubious Democracy 2003-2004," www.fairvote.org/dubdem/overview.htm. The situation is even worse in some states. For example, in California, 50 out of 53 races were decided by margins of greater than 20 percent.

In a related phenomenon, incumbents are now, more than ever, nearly guaranteed reelection: whereas

incumbents' losses to general election challengers averaged 22 per election in 1972, 1982, and 1992, incumbents lost only eight seats in 2002, including four in incumbent-on-incumbent races. *See* Sam Hirsch, "The United States House of Unrepresentatives: What Went Wrong in the Latest Round of Congressional Redistricting," 2 Election Law Journal 179, 183 (2003).

This situation is not mere happenstance, but rather the result of carefully orchestrated political gerrymandering—sometimes by one of the major political parties to the disadvantage of the other, and sometimes by the two political parties colluding to protect their seats and their incumbents. A comparison of the competitiveness of U.S. House races in 2002 to statewide races demonstrates the extraordinary effect of political gerrymandering. Out of 70 statewide races for governor and Senate in 2002, the winner obtained 55 percent or more of the vote in less than half (33) of those races, and only 24 percent (17) of those races were won by 60 percent or more. Yet the elections for most of the U.S. House of Representatives were won by a landslide: Out of the 435 races, the winner had 55 percent or more of the vote in 91 percent (396) of those races, and candidates in 81 percent of the races won by 60 percent or more. *See* www.fairvote.org/redistricting/incumbentprotection.htm. These statistics demonstrate that even though most States are close to evenly divided between the two major political parties, the vast majority of districts for the U.S. House of Representatives are drawn so as to prevent any real competition.

A. Pennsylvania's Partisan Gerrymander Violates The Equal Protection Clause.

In *Davis v. Bandemer*, the plurality held that the Equal Protection Clause places limits on political gerrymandering in state legislatures. The Court stated that the Constitution prohibits "intentional discrimination against an identifiable group" that has "an actual discriminatory effect on that group." 478 U.S. at 127. To be sure, the evidentiary burden is high: To establish such a violation, the plaintiff must show that the discrimination "substantially disadvantages certain voters in their opportunity to influence the political process effectively." *Id.* at 133. Nonetheless, *Bandemer* made clear that claims of partisan gerrymandering are justiciable and, when evidentiary burdens have been met, remediable by a court.

Moreover, *Bandemer* concerned redistricting of state legislative elections. This Court has stated that the constitutional standards governing congressional reapportionment are even more stringent than those for redistricting for state office. *See, e.g, Gaffney v. Cummings*, 412 U.S. 735, 741-42 (1973); *Mahan v. Howell*, 410 U.S. 315, 322-323 (1973). Thus, the evidentiary standard enunciated in *Bandemer* for establishing an equal protection violation should be applied more leniently in a congressional redistricting case such as this one.

This case presents a classic example of one type of political gerrymandering—the partisan gerrymander. The

Pennsylvania redistricting put Democrats at a significant disadvantage. Even though the two major political parties hold nearly equal support among Pennsylvania residents, *see* J.S. App. 137a, the 2002 redistricting ensures that Republicans will win a supermajority of seats in Pennsylvania's congressional delegation. Indeed, that is just what was intended and what happened. In the 2000 elections, ten Democrats and eleven Republicans represented Pennsylvania in Congress. Under the new plan, Democrats lost three seats in the 2002 elections, and Republicans now dominate 12-7.

The district court found that this lopsided outcome was an intentional act of partisan gerrymandering by the Republicans in Pennsylvania's General Assembly. J.S. App. 33a. Nonetheless, the district court rejected the Appellants' equal protection claim because they could not show that they would be "completely shut out of the political process." *Id.* The court believed that unless Appellants could demonstrate that they were prohibited from "registering to vote; organizing with other like-minded voters; raising funds on behalf of candidates; voting; campaigning, or speaking out on matters of public concern," they did not have a cognizable equal protection claim under *Bandemer*. *Id.* at 39a.

Bandemer does not require such a showing, even in the context of state legislative elections. Indeed, if complete exclusion from the political process were the standard, then political gerrymandering would *never* be judicially remediable, so long as everyone was allowed to

cast a ballot, no matter how little impact their vote might have. Moreover, the specific prohibitions listed by the district court would clearly be unconstitutional regardless of whether they accompanied a discriminatory redistricting plan. Thus, the district court's analysis renders meaningless *Bandemer*'s recognition that political gerrymandering can violate the Equal Protection Clause.

True, the right to participate in the political process does not guarantee a right to vote for a winning candidate. Those individuals who voted for the loser are presumed to be adequately represented by the winning candidate and to have the same opportunity to influence their representative as any other voter in the district. *Bandemer*, 478 U.S. at 132. That presumption, however, is overcome in the most extreme cases of political gerrymandering, as where one political party significantly fences out the other (partisan gerrymandering), or where Republicans and Democrats agree to carve up the state into safe districts for their incumbents to lock in the current legislative proportions (bipartisan gerrymandering). *Bandemer* acknowledged as much, explaining that although the presumption is that an elected candidate will not entirely ignore the interests of those who voted against him or her, that presumption can be overcome by "actual proof to the contrary." *Id.*

For example, in *Bandemer*, the plurality concluded that for a State's redistricting to be held unconstitutional, there must be "evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political

process." 478 U.S. at 133; *see also id.* at 126 n.9. "[U]nconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or group of voters' influence on the political process as a whole." *Id.* at 132. This Court explained that the "question is whether a particular group has been unconstitutionally denied its chance to effectively influence the political process." *Id.* at 132-33.

Although merely showing that Democratic candidates were not elected in proportion to Democrats in the general population is not enough to prevail on a claim of partisan gerrymandering, *Bandemer* does not require Appellants to show complete exclusion from the political process, as the district court erroneously concluded. Because Appellants have demonstrated that Democrats were the victims of intentional discrimination that significantly diminished their political influence in the 2002 election, and threatens to continue to do so throughout the decade, they have done all they could to show that Pennsylvania's redistricting violated the Equal Protection Clause.

Applying the limits established in *Bandemer* is now more important than ever, as new technologies have transformed the process of political gerrymandering into a near-perfect science. *See Shaw v. Hunt*, 861 F. Supp. 408, 457 (E.D.N.C. 1994) (describing computer programs); Richard H. Pildes & Richard G. Niemi, "Expressive Harms, 'Bizarre Districts,' and Voting Rights: Evaluating Election-District Appearances After *Shaw v.*

Reno," 92 Mich. L. Rev. 483, 574 (1993). As this case demonstrates, modern computer districting software allows map-makers to carve up voting districts "with the precision of a surgeon." Michael W. McConnell, "The Redistricting Cases: Original Mistakes and Current Consequences," 24 Harv. J.L. & Pub. Pol'y 103, 103 (2000). "[W]hen [political profiles are] overlaid on a census map, it requires no special genius to recognize the political consequences of drawing district lines along one street rather than another." *Gaffney*, 412 U.S. at 753. Thus, the Court must make it clear that States cannot further alienate the electorate by redistricting so as make elections a foregone conclusion.

B. The Practice Of Bipartisan Gerrymandering Violates The Equal Protection Clause.

Although *Bandemer* concerned partisan gerrymandering, such as occurred here, its rationale applies equally to all political gerrymandering that discriminates against a cognizable political group—whether the impetus is partisan, bipartisan, or incumbent protection. In deciding this case, this Court should make clear that bipartisan gerrymandering similarly corrodes the democratic process and violates the Equal Protection Clause.

For instance, by creating "safe" districts for both political parties, bipartisan gerrymandering intentionally diminishes the influence of centrist voters, particularly registered independents. That is because internal party

selection of candidates, either through a primary or convention nomination, usually rewards the more polarized and activist wing of the party. *See* Samuel Issacharoff, "Gerrymandering and Political Cartels," 116 Harv. L. Rev. 593, 627-28 (2002). Normally, the general election acts as a counterweight, pulling the nomination process in both parties back toward the middle and closer to the majority of voters as they compete for the centrist votes. If the districts have been carved up into "safe" Republican or Democratic strong-holds, however, the general election is a foreordained conclusion that does not temper the primary as it would in a contested district. *Id.* Thus, while a bipartisan gerrymander may keep intact a balance of Republicans and Democrats proportional to those in the population, it is likely that those Republicans and Democrats will be, respectively, far more right and left of center than if districts had not created "safe" seats for each party. *See id.* at 629.

Discrimination against politically moderate independents is just as pernicious as discrimination against Republicans or Democrats, and leads to the same results that this Court has declared to be constitutionally impermissible. When the two major political parties create "safe" districts for each party's candidates, ensuring that Democrats and Republicans will win by wide margins in each of the districts, they eliminate the need for candidates from the two parties to compete for the votes of centrist independents and other swing voters. These voters' allegiances are vital in close elections, but can easily be ignored by Democrats and Republicans who have a

significant cushion of support in their districts. Thus, just as in partisan gerrymandering, the "excluded groups have 'less opportunity to participate in the political processes and to elect candidates of their choice.'" *Bandemer*, 478 U.S. at 131 (quoting *Rogers v. Lodge*, 458 U.S. 613, 624 (1982)). And in both cases, there is a "lack of responsiveness by those elected to the concerns of the relevant groups." *Id.*

Along with independents, challengers to incumbents are the clear losers of "sweetheart gerrymanders"—the term used when both parties protect their incumbents and preserve the status quo at the expense of drawing districts that would result in serious competition for votes. Issacharoff, 116 Harv. L. Rev. at 624; Mark E. Rush, "Voters' Rights and the Legal Status of American Political Parties," 9 Journal of Law and Politics 487, 505 (1993). Incumbents have a powerful advantage at all levels of state and federal elections, and their advantage has steadily increased since the 1940s. *See* McConnell, 24 Harv. J.L. & Pub. Pol'y at 103. Although bipartisan redistricting is not the only reason for incumbent dominance, it plays a significant role, such as when district lines are purposefully redrawn to increase support for an incumbent whose last election was too close for comfort. *See* Gary C. Jacobson, "Terror, Terrain and Turnout: Explaining the 2002 Midterm Elections," 118 Pol. Sci. Q. 1, 10 (Spring 2003); *see also* Center for Voting and Democracy, "Monopoly Politics 2002: How 'No Choice' Elections Rule in a Competitive House," www.fairvote.org/2002/mp2002.htm#overview

(describing how redistricting in 2002 shielded incumbents).

The 2001-2002 round of congressional redistricting was the most incumbent-friendly in modern history, and the dominance of incumbents at the national level is now nearly complete. *See* Hirsch, 2 Election Law Journal at 179. The numbers tell the story. In California and Texas, there were 14 competitive districts in 2000 (defined as districts in which the voters preferred one presidential candidate to the other by no more than 53 percent to 47 percent); after the redistricting of 2002, only two such districts remain competitive using that measure. *See* www.fairvote.org/redistricting/incumbentprotection.htm. As the Washington Post editorialized more generally about the 2002 election, the "magnitude of incumbency's triumph in last week's elections for the House of Representatives was so dramatic that the term 'election'—with its implication of voter choice and real competition—seems almost too generous to describe what happened on Tuesday." Editorial, "Broken Democracy," Washington Post, Nov. 10, 2002, at B6; *see also* Editorial, Richmond Times-Dispatch, March. 17, 2002, at E2 ("Citizens will cast ballots in November, but their votes effectively were counted when pols drew the lines.").

Perhaps most disturbing, more and more races are going uncontested as challengers choose not to spend the time and money on a race in which the result is predetermined. A record low of four challengers successfully upset incumbents in the 2002 House

elections, about one fifth as many successful challengers as in previous election years. *See* Hirsch, 2 Election Law Journal at 188. Challengers fared no better in the primaries. In 2002, only four Democratic incumbents (California's Gary Condit, Alabama's Earl Hilliard, Georgia's Cynthia McKinney, and Ohio's Tom Sawyer) and no Republican incumbents lost to non-incumbent challengers in their respective party primaries. *Id.* at 189. Thus, lack of competitiveness in the general elections is not offset by increased competition in the party primaries. *Id.*

Professor Issacharoff has likened the injuries caused by bipartisan gerrymandering to those produced by an anti-trust cartel. If two dominant rival firms producing similar products—Coke and Pepsi, for example—agreed to divide up geographic territory to avoid competition against one another, consumers would suffer because they would pay higher prices for fewer choices as each of the rivals enjoyed the benefits of noncompetition in its "safe" region. Such a market division agreement would unquestionably constitute a violation of the Sherman Act. *See* Issacharoff, 116 Harv. L. Rev. at 599. Of course, the consumer product market is not perfectly comparable to the market for political candidates. Nonetheless, Professor Issacharoff notes that the obvious injury to consumers that would result were two producers to divide up the market geographically has something to tell us about the injuries that arise when the two major political parties engage in similar collusion when re-drawing political districts. *Id.*

Indeed, bipartisan gerrymandering may be even more destructive to the health of our democratic system than partisan gerrymandering. When one party has redrawn districts to benefit itself at the expense of the other, dissatisfied voters can at least turn to the disadvantaged party for political support. However, when the two major political parties conspire to divide up the electoral map, all citizens suffer from the lack of competition between candidates, and yet they have nowhere to turn to try to regain political influence. *See* Issacharoff, 116 Harv. L. Rev. at 600. Bipartisan gerrymandering sharply reduces the accountability of candidates in *both* parties, because Democratic and Republican candidates know they are very likely to win regardless of their voting record or behavior.

Admittedly, all redistricting has some political impact. "[D]istricting inevitably has and is intended to have substantial political consequences." *Gaffney,* 412 U.S. at 753. In *Gaffney*, this Court rejected appellants' claim that Connecticut's state legislative reapportionment plan violated the Fourteenth Amendment because it was intended to create districts that would achieve "political fairness" between the political parties, concluding that "judicial interest should be at its lowest ebb" when reviewing state reapportionment for state legislature. *Id.* at 754. The redistricting in *Gaffney* may also have been less cause for concern because independent judges, not members of the legislature, were responsible for drawing the new districts. *Id.* at 736.

Just because politics often plays some role in districting, however, does not justify extreme political gerrymandering that so discriminates against a group of voters as to render their votes superfluous. Despite its holding, the decision in *Gaffney* acknowledged that reapportionment "to achieve political ends or allocate political power[]" is not "exempt from judicial scrutiny under the Fourteenth Amendment." 412 U.S. at 754. The Court explained that the Fourteenth Amendment guards against redistricting plans in which "racial or political groups have been fenced out of the political process and their voting strength invidiously minimized." *Id.* In line with those observations in *Gaffney*, the *Bandemer* plurality concluded that partisan gerrymandering is justiciable. For the same reasons, bipartisan gerrymandering must also be judicially remediable.

Finally, bipartisan gerrymandering is not constitutionally permissible simply because both major political parties agree to it. The Constitution no more permits Democrats and Republicans to rig an election together than it permits them to do so unilaterally. Just as the President and Congress cannot agree to subvert the constitutionally mandated process of enacting legislation—for example, by giving Congress a legislative veto, *I.N.S. v. Chadha*, 462 U.S. 919 (1983), or giving the President a line-item veto, *Clinton v. City of New York*, 524 U.S. 417 (1998)—so, too, the major political parties cannot agree to subvert the process by which the voters select their representatives. Protecting the two-party system is not the same as ensuring perpetual dominance of

the existing two major parties.

For these reasons, commentators consider the injuries caused by partisan and bipartisan gerrymandering to be closely related, and have urged courts to actively prevent both types of political gerrymandering. For example, Judge Richard Posner has suggested that federal courts should carefully scrutinize gerrymandering that "entrench[es]" either the "dominant [political] party" (as occurs in partisan gerrymandering) *or* "incumbents" (as occurs in bipartisan gerrymandering). Richard A. Posner, Law, Pragmatism, and Democracy 242 (2003); *see also* John Hart Ely, "Gerrymanders: The Good, The Bad, and the Ugly," 50 Stan. L. Rev. 607, 621 (1998) (criticizing "self-dealing maneuvers on the part of incumbents seeking to perpetuate their incumbency"). When deciding this case, the Court should make clear to the lower courts that they are obligated to remedy the serious harm to the democratic process that occurs whenever the two major political parties—separately or together—engage in extreme political gerrymandering.

CONCLUSION

For the reasons stated above, this Court should reverse the district court and hold that Pennsylvania's 2002 redistricting plan is unconstitutional.

Respectfully submitted,

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Supreme Court of the United States

RICHARD VIETH, et al.,

Appellants,

v.

ROBERT C. JUBELIRER, et al.,

Appellees.

On Appeal From The United States District Court For The Middle District Of Pennsylvania

BRIEF OF AMICI CURIAE LEADERSHIP OF THE ALABAMA SENATE AND HOUSE OF REPRESENTATIVES: LOWELL BARRON, JEFF ENFINGER, VIVIAN DAVIS FIGURES, RODGER SMITHERMAN, SETH HAMMETT, DEMETRIUS NEWTON, AND KEN GUIN IN SUPPORT OF APPELLEES

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INTEREST OF AMICI CURIAE

This brief is filed on behalf of the leadership of the Alabama Senate and House of Representatives: Senator Lowell Barron, President Pro Tem of the Senate; Senator Jeff Enfinger, Senate Floor Leader and Majority Leader; Senator Vivian Davis Figures, Chair of the Senate Democratic Caucus; Senator Rodger Smitherman, Chair of the Alabama Legislative Black Caucus; Representative Seth Hammett, Speaker of the House; Representative Demetrius Newton, Speaker Pro Tem of the House; and Representative Ken Guin, House Majority Leader. All amici were elected and serve as Democrats. Senators Figures and Smitherman and Representative Newton are African Americans.[1]

Amici are concerned that a new constitutional rule prohibiting partisan gerrymandering, such as the one suggested by the Vieth appellants, will undermine the achievements of the Alabama Legislature when it enacted statutes in 2001 redrawing in a racially fair political process the districts from which members of Congress, the Alabama Senate and the Alabama House of Representatives are elected. All three of these redistricting statutes received preclearance under § 5 of the Voting Rights Act, 42 U.S.C. § 1973c. *See* http://www.usdoj.gov/crt/voting/sec_5/statewides.htm. This was the first time since 1901 that the Alabama Legislature was redistricted without intervention by the courts. It was made possible primarily

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[1] The parties have consented to the filing of this brief. Their letters of consent have been filed with the Clerk of this Court. Pursuant to this Court's Rule 37.6, amici state that none of the parties authored this brief in whole or in part and no one other than amici or counsel contributed money or services to the preparation and submission of this brief.

by the willingness of white and African-American Democratic legislators, who controlled majorities in both houses of the Legislature, to form coalitions that sought both to protect reliable Democratic seats with majority-black constituencies and to reduce the size of those black voter majorities in order to increase the number of reliable Democratic voters in several seats closely contested between Democrats and Republicans. As a result, in the 2002 elections, even though Republican candidates polled statewide majorities in Congressional and most statewide office contests, Democrats won 52% of the votes statewide for State Senate seats and 51% of the votes statewide for State House seats. Democrats captured 71% of the 35 Senate seats and 60% of the 105 House seats. *See* http://www.sos.state.al.us/cf/election/her/her-sw.cfm and http://www.legislature.state.al.us/.

After § 5 preclearance was obtained, the state legislative districts were successfully defended in a civil action claiming that they violated the constitutional principles of *Shaw v. Reno*, 509 U.S. 630 (1993), and its progeny. The State defendants, relying on *Easley v. Cromartie*, 532 U.S. 234 (2001), contended that politics, not race, was the predominant motive for the plans' designs, and the three-judge district court agreed. *Montiel v. Davis*, 215 F.Supp.2d 1279, 1283 (S.D. Ala. 2002) (3-judge court) ("Plaintiffs have proffered no evidence to refute the abundant evidence submitted by the defendants and defendant-intervenors which establishes that black voters and Democratic voters in Alabama are highly correlated; that the Legislature utilized recent election returns to ascertain actual voter behavior; and that Acts 2001-727 and 2001-729 were the product of the Democratic Legislators' partisan political objective to design Senate and House plans that would preserve their respective Democratic majorities.") (footnote omitted).

SUMMARY OF ARGUMENT

The Alabama Legislature in 2001 successfully redrew its Senate, House and Congressional districts for the first time since 1901 without judicial intervention. Heeding this Court's holding in *Easley v. Cromartie*, 532 U.S. 234 (2001), that the purposeful aggregation of African-American voters is justified when it is done primarily for partisan political purposes, the Democratic leadership pursued a biracial strategy aimed at safeguarding its governing majorities in both houses of the Legislature. Anticipating the coalitional politics endorsed by this Court in *Georgia v. Ashcroft*, 123 S.Ct. 2498 (2003), African-American representatives pulled, hauled and traded with their white colleagues in negotiations that necessarily reduced the size of black voter majorities in the "safe" black districts in order to increase the number of reliably Democratic voters in several contested black influence districts. This strategy aimed to increase the effective exercise of the electoral franchise for African Americans by preserving the important leadership roles of their representatives in governing Democratic majorities.

The biracial, coalition-building strategy succeeded. The 2002 general election returned Democratic candidates to 71% of the Senate seats and 60% of the House seats, with 52% of the statewide vote supporting Democrats in Senate races and 51% supporting Democrats in House races. Republican candidates, meanwhile, won most of the statewide offices, although the Democratic candidate won at least one of them. The Democratic leadership also managed to increase one of the black influence districts in the Congressional plan to 30% black voting-age population in hopes of capturing a vacant seat and improving Democratic representation in a Congressional delegation composed of five Republicans and two Democrats. However,

the Republican candidate narrowly won this open Congressional seat.

A new constitutional rule, such as the one proposed by appellants, which would put limits on the allowable variation between a party's share of the vote in some array of statewide elections and the number of seats it carries in legislative and Congressional elections, threatens the ability of African Americans in Alabama to continue the effective exercise of their newly won ability to participate in the political process. As an historically entrenched minority, African Americans can hope to move beyond permanent minority status in the Legislature only if they can provide partisan white politicians an incentive to build winning coalitions between white and black voters. That incentive would be seriously diminished, if not eliminated altogether, if this Court mandated redistricting rules that guarantee rough proportional representation between the two major parties.

This Court should be mindful of the potential conflict between the asserted rights of partisan elites and their supporters and the established rights of historically disadvantaged racial and ethnic minorities. This appeal does not present the question whether racial minorities may demand the creation of effective influence districts as a matter of statutory right; rather, it presents the question whether party partisans will be afforded constitutional rights that could trump both the statutory and constitutional rights of racial and ethnic minorities to participate equally in the political process and to negotiate influence districts that enhance their effective exercise of the electoral franchise. Perversely, such an anti-partisan gerrymandering rule would encourage the cracking of black influence districts, the repacking of majority-black districts and increased racial polarization of the electorate.

The identifiable political group whose vote is diluted by alleged partisan gerrymandering is fundamentally indeterminate. Appellants' arguments confuse conceptually the constitutional difference between individuals belonging to an immutable, ancestral group who share electoral preferences and all individuals who share political preferences. The former individuals do not change their group identity whether or not they share preferences. The latter individuals change their group identity as their electoral preferences change. The Constitution forbids discrimination against individuals based on a suspect group classification, but it does not guarantee individuals the right to have their preferences reflected proportionally in election results. Indeed, single-member districts are not designed to aggregate individual preferences. Only at-large election systems employing proportional representation rules are designed to aggregate individual preferences more or less accurately. The shares of the statewide vote garnered by Democratic and Republican candidates reflect the relative strengths of groups of individual voters who share preferences provisionally. They do not reflect stable associations of partisan supporters. In the United States, most persons vote for candidates, not for the more committed party cadres, who compete for the support of an electorate whose allegiance varies from candidate to candidate, from election to election and from generation to generation.

Finally, the original intentions of the founding generation do not, as the amici historians contend, lend any support to proposals for discovering in the Constitution a principle establishing even rough proportional representation for party partisans. But constitutional history leaves no doubt that it would be a travesty to subordinate to concerns of partisan fairness the ability of African Americans and other racial and ethnic minorities to participate

equally in the political process and to elect candidates of their choice.

ARGUMENT

I. THE FACTS IN ALABAMA: THE LONG JOURNEY FROM SLAVERY AND JIM CROW TO AFRICAN AMERICANS' EFFECTIVE EXERCISE OF THE FRANCHISE IN THE BIRACIAL POLITICS OF REDISTRICTING.

Alabama is the state in which this Court established "one person, one vote" as a substantive constitutional requirement for all state elective representation systems. *Reynolds v. Sims*, 377 U.S. 533, 558 (1964) (*quoting* Justice Douglas in *Gray v. Sanders*, 372 U.S. 368, 381 (1963)). Alabama's state legislative districts had not been redrawn since passage of its 1901 Constitution, which was enacted primarily for the purpose of disfranchising African-American voters. *Hunter v. Underwood*, 471 U.S. 222, 228-29 (1985); *Knight v. Alabama*, 787 F.Supp. 1030, 1090 (N.D. Ala. 1991), *aff'd in relevant part*, 14 F.3d 1534 (11th Cir. 1994); *Dillard v. Crenshaw County*, 640 F.Supp. 1347, 1358 (M.D. Ala. 1986); *Bolden v. City of Mobile*, 542 F.Supp. 1050, 1062-63 (S.D. Ala. 1982), *on remand from City of Mobile v. Bolden*, 446 U.S. 55 (1980). In the four decades following remand from *Reynolds*, the state House and Senate plans were drawn either by courts themselves or under the supervision of a court. *Kelley v. Bennett*, 96 F.Supp.2d 1301, 1308-10 (M.D. Ala.), *rev'd sub nom. Sinkfield v. Kelley*, 531 U.S. 28 (2000) (summarizing the history of legislative redistricting following the 1970, 1980 and 1990 censuses); *Burton v. Hobbie*, 561 F.Supp. 1029, 1030-32 (M.D. Ala. 1983) (3-judge court) (summarizing federal court involvement in legislative redistricting from 1962 to 1983).

As a result of court-ordered redistricting, the first two African Americans to serve in the Alabama Legislature since Reconstruction, Fred Gray and Thomas Reed, were elected to the House in 1970. FRED GRAY, BUS RIDE TO JUSTICE 237-53 (1995); ROBERT J. NORRELL, REAPING THE WHIRLWIND: THE CIVIL RIGHTS MOVEMENT IN TUSKEGEE 190-200 (1986). In the first election following the 1980 census, seventeen African Americans were elected to the House and three to the Senate.[2] Following the state court-ordered redistricting in 1993, *see Rice v. Sinkfield*, 732 So.2d 993 (Ala. 1999), 27 African Americans were elected to the House and 8 African Americans were elected to the Senate, all but one[3] from a majority-black single-member district. *See* submissions of the Alabama Attorney General to the U.S. Department of Justice, August 14, 2001, and September 4, 2001, http://www.legislature.state.al.us/senate/senatemaps2001/Act%20No.%202001-727%20Preclearance%20Letter.pdf (hereafter "Senate submission"); http://www.legislature.state.al.us/house/housemaps2001/Act%20No.%202001-729%20Letter.pdf (hereafter "House submission"). All the African-American legislators were elected as Democrats and were members of the House and Senate Democratic Caucuses and the Legislative Black Caucus. Democrats held substantial majorities in both houses of the Legislature, and African Americans held several important leadership positions, including Speaker pro tem of the House, Chair of the Senate Finance and Taxation

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[2] *See* James U. Blacksher and Larry Menefee, *From* Reynolds, v. Sims *to* City of Mobile v. Bolden: *Have the White Suburbs Commandeered the Fifteenth Amendment?*, 34 HAST. L.J. 1, 39 n.261 (1982).

[3] House District 85 had a black total population majority but a white voting-age majority. *Kelley v. Bennett, supra*, 96 F.Supp.2d at 1319.

Education Committee and Chair of the House Government Finance and Appropriations Committee.

The Alabama Attorney General, the Governor and the leadership of the Legislature spent most of the past decade defending inter-related *Shaw* challenges to the 1993 redistricting plan. *See Kelley v. Bennett, supra*; *Rice v. Sinkfield, supra*. The district court found *Shaw* violations in several House and Senate districts, but this Court reversed the judgment on standing grounds. *Sinkfield v. Kelley*, 531 U.S. 28 (2000). In these circumstances, as they undertook redistricting in 2001, the Democratic leadership took its cue from this Court's most recent *Shaw* decision, *Easley v. Cromartie*, 532 U.S. 234 (2001). *Easley* holds that a *Shaw* plaintiff has the burden of proving that the aggregations of African-American residents in legislative redistricting plans are *not* predominantly the product of "a constitutional political objective," such as the protection of partisan incumbents. 532 U.S. at 239, 247-48. "Caution is especially appropriate in this case, where the State has articulated a legitimate political explanation for its districting decision, and the voting population is one in which race and political affiliation are highly correlated." *Id.* at 242.

In Alabama, as was the case in *Georgia v. Ashcroft*, 123 S.Ct. 2498 (2003), "[t]he goal of the Democratic leadership – black and white – was to maintain the number of majority-minority districts and also increase the number of Democratic Senate seats." 123 S.Ct. at 2504 (citation omitted). African-American legislators in Alabama also recognized that they and their constituents had "a better chance to participate in the political process under the Democratic majority than [they] would have under a Republican majority," and they understood the many advantages they would enjoy in the actual work of the Legislature as leaders and members of a governing Democratic majority. *Id.* at 2513. So "[p]art of the Democrats'

strategy was not only to maintain the number of majority-minority districts, but to increase the number of so-called 'influence' districts, where black voters would be able to exert a significant – if not decisive – force in the election process." *Id.* at 2506 (citation omitted). Just as most African-American legislators in Georgia voted for the product of this biracial coalition strategy, *id.*, so did all members of the Senate Black Caucus and 20 of 27 members of the House Black Caucus in Alabama vote for the finally enacted House plan, while all African-American Senators and 19 African-American House members voted for the final Senate plan. *See* House submission, *supra*, at 6-7; Senate submission, *supra*, at 13. They accepted the political risks of reducing the size of black voter majorities in the "safe" African-American districts and worked "to pull, haul, and trade to find common political ground" with their white Democratic (and Republican) colleagues. 123 S.Ct. at 2513 (*quoting Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994)).

The strategy of coalition-building between white and black Democrats was explained to the U.S. Department of Justice during the preclearance process under § 5 of the Voting Rights Act. Unlike the data the Justice Department found insufficient to demonstrate the absence of retrogression in the Georgia Senate plan, the Democratic performance data provided by the Alabama leadership, which included voting returns from previous elections in the legislative districts as well as for statewide offices, clearly met the State's burden of demonstrating no retrogression in African-American voters' "effective exercise of the electoral franchise." 123 S.Ct. at 2504 (quoting *Beer v. United States*, 425 U.S. 130, 141 (1976)).

As indicated, before the first elections were held under the precleared House and Senate redistricting plans in 2002, a three-judge federal district court dismissed a *Shaw* challenge on the ground that partisan political motives predominated over any purely racial design. *Montiel v.*

Davis, supra. The 2002 general election results show that the Democratic leadership's coalition strategy was largely successful. All of the Democratic seats with black voter majorities in the 1993 plan continued to elect candidates favored by African-American voters in 2002, notwithstanding the reduction in the size of those black voter majorities. White Democrats won in all eight of the black influence districts in the Senate races, and Democratic candidates won twelve of the seventeen black influence districts in the House, including seven of the ten that were contested in the general election. *See* tables below.[4] In House District 84, with a black VAP of 48.954%, the white incumbent, Billy Beasley, was unopposed in both the Democratic primary and the general election. In House District 85, with a black VAP of 43.951%, the African-American incumbent, Locy Baker, won the Democratic primary and defeated a white Republican opponent in the general election.

Senate District	% black VAP	Winner	Winner's% of vote
7	30.624	Democrat	64.06
11	32.531	Democrat	64.02
21	22.633	Democrat	58.77
22	28.299	Democrat	51.11
27	20.296	Democrat	64.06
30	28.616	Democrat	unopposed
31	22.565	Democrat	65.17
35	27.764	Democrat*	50.93

* Defeated Republican incumbent

[4] The election returns displayed in these tables can be found at http://www.sos.state.al.us/cf/election/her/her-sw.cfm. The voting-age population figures are culled from the redistricting "map packages" which can be obtained from the State Reapportionment Office. *See* http://www.legislature.state.al.us/reapportionment/reap.html#anchor509416. The winner is listed as unopposed where he or she had no major party opposition.

House District	% black VAP	Winner	Winner's% of vote
6	26.863	Democrat	57.60
8	21.408	Democrat	73.98
21	24.293	Democrat	51.09
33	21.103	Republican	61.58
37	21.227	Democrat	74.22
38	28.432	Republican	58.53
61	27.078	Democrat	unopposed
64	23.822	Republican	55.20
65	24.768	Democrat	57.87
66	24.145	Democrat	unopposed
73	25.049	Republican	unopposed
75	20.982	Republican	unopposed
81	23.163	Democrat	69.93
84	48.954	Democrat	unopposed
85	43.951	Democrat**	60.64
89	31.123	Democrat	unopposed
90	31.895	Democrat	unopposed

** African American

The Democratic leadership of the Alabama Legislature also attempted to create an effective black influence district in the Congressional redistricting plan. Bob Riley was vacating his Third Congressional District seat to run for (and ultimately to win) the Governor's office. After hard bargaining between Democrats and Republicans in both houses and with the members of the Alabama Congressional delegation,[5] the plan enacted raised black VAP in District 3 to 30.215%. The size of the black voter majority in Congressional District 7 was reduced substantially in order to increase Democratic voting strength in District 3. *See* http://www.legislature.state.al.us/reapportionment/

[5] *See* Bill Poovey, *Alabama Demos, Republicans battle over new U.S. House districts*, The Associated Press, Sept. 17, 2001 (online edition); David White, *Governor signs district plan*, The Birmingham News, Feb. 2, 2002 (online edition).

congressional/congressional.html. The Department of Justice interposed no objection to Alabama's Congressional plan under section 5 of the Voting Rights Act. Nevertheless, the Republican candidate won this open seat by a narrow margin. *See* table below. The (white) Democratic candidate garnered 48.20% of the general election vote.

Congressional District	% black VAP	Winner	Winner's% of vote
1	25.731	Republican	60.83
2	27.444	Republican	68.75
3	30.215	Republican	50.31
4	4.774	Republican	unopposed
5	16.096	Democrat	73.28
6	7.291	Republican	unopposed
7	58.327	Democrat*	unopposed

* African American who defeated African-American incumbent in the Democratic primary.

It is clear from these data that, although African Americans reliably vote Democratic in substantial numbers, and although some white voters also usually support either Democrats or Republicans, many Alabama voters split their tickets and vote for the Democratic candidate for one office and the Republican candidate for another. The following table, which summarizes returns from the 2002 general election, demonstrates this fact dramatically:

Office	Statewide total vote	Repub total vote	Repub % vote	Demo total vote	Demo % vote	Demo seats	Demo % seats
State Senate	1,236,306	549,943	44.48	647,267	52.35	25	71.4
State House	1,199,583	558,087	46.52	616,224	51.37	63	60.0
US House	1,268,802	694,606	54.75	507,117	39.97	2	28.6
US Senate	1,353,023	792,561	58.58	538,878	39.83	0	0
Governor	1,367,053	672,225	49.17	669,105	48.95	0	0
Attorney General	1,326,304	780,524	58.85	515,123	38.84	0	0
Lieutenant Governor	1,349,038	630,839	46.76	694,442	51.48	1	100

The statewide offices selected by appellants to establish a Democratic benchmark in Pennsylvania would produce a Republican benchmark in Alabama, even though the results of other Alabama elections yield Democratic voting majorities. No identifiable political groups and not even a colorable partisan constitutional injury can be postulated when electoral support for the two major parties varies this much.

II. THERE IS A POTENTIAL CONFLICT BETWEEN A NEW PARTISAN GERRYMANDERING RULE AND THE VOTING RIGHTS OF AFRICAN AMERICANS AND OTHER RACIAL OR ETHNIC MINORITIES.

If this Court created a new constitutional rule along the lines proposed by the Vieth appellants, the coalition-building strategy that defeated the *Shaw* challenges against the plans black legislators successfully negotiated with white legislators likely would be turned around to attack those plans in new lawsuits alleging unconstitutional partisan gerrymandering. The State's successful politics-not-race defense has completely discouraged new *Shaw* challenges to any of Alabama's legislatively enacted redistricting plans. But a new wave of litigation in Alabama is bound to follow a ruling by this Court along the lines urged by the Vieth appellants. As we understand appellants' proposed constitutional standard, persons who voted for Republican House or Senate candidates anywhere in Alabama could initiate a civil action challenging the entire House and Senate plans. Under appellants' two-part test, the plaintiffs would have no difficulty showing "that partisan advantage was the predominant motivation behind the entire statewide plan," appellants' brief at 32, because an intent to safeguard Democratic seats was open and explicit. Second, to show allegedly impermissible

effects, they would point not to statewide totals in the House and Senate races themselves but to returns "for statewide offices such as U.S. Senator, governor, and attorney general." *Id.* at 38 n.32. Since those offices, along with most other statewide offices, have been won more often over the past decade by Republicans than by Democrats, http://www.sos.state.al.us/cf/election/her/her-sw.cfm, appellants' proposed constitutional standard could require the State – or, more likely, a federal court – to redraw the House and Senate plans to provide Republican candidates a better opportunity to be elected. That would mean, at a minimum, "cracking" African Americans in the black influence districts, either by repacking them in majority-black districts or by further dispersing them among majority-white districts.

Appellants do not explain how such a result could be squared with this Court's precedents prohibiting violation of the statutory and constitutional voting rights of African Americans and other racial or ethnic minorities. *E.g., Georgia v. Ashcroft, supra*, 123 S.Ct. at 2512 ("a court must examine whether a new plan adds or subtracts 'influence districts' – where minority voters may not be able to elect a candidate of choice but can play a substantial, if not decisive, role in the electoral process"); *id.* at 2513-14 ("the dissent ignores that the ability of a minority group to elect a candidate of choice remains an integral feature in any § 5 analysis") (*citing, inter alia, Thornburg v. Gingles*, 478 U.S. 30, 98 (1986) (O'Connor, J., concurring in judgment)). This Court has not resolved the question whether diluting the electoral strength of protected minorities in influence districts may constitute a violation of § 2 of the Voting Rights Act, 42 U.S.C. § 1973. *See Parker v. Ohio*, 263 F.Supp.2d 1100 (S.D. Ohio 2003), *appeal pending*, No. 03-411 (U.S. S.Ct.) (whether racial minorities may maintain a cause of action under § 2 to challenge

state legislative redistricting plan that fails to provide them influence districts).[6]

But the issue presented in the instant appeal by the circumstances in Alabama is not whether African Americans are entitled to demand influence districts as a matter of right, but whether the exercise of their equal opportunity to participate in the political process and to negotiate influence districts shall be constrained constitutionally if the political party they support obtains a higher percentage of legislative seats than the party's percentage of the statewide vote. Will the elected representatives of African Americans who have pulled, hauled and traded with their white colleagues to preserve Democratic majorities in both houses of the Alabama Legislature by successfully encouraging the formation of black-white voter coalitions now be told they must repack their safe black districts, thereby reducing their ability to influence legislation and encouraging a racial re-polarization of the vote? An historically entrenched minority, like African Americans in Alabama, likely would be the only enduring losers if this Court established a new constitutional rule that requires rough proportional representation between the two major parties. As history demonstrates, eventually Democrats and

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[6] We make no distinction for purposes of this brief between African-American "influence" districts and African-American "coalitional" districts. *E.g., Georgia v. Ashcroft*, 123 S.Ct. 2498, 2513 (2003); *id.* at 2518 (Souter, J., dissenting); *Hall v. Virginia*, __ F.Supp.2d __, 2003 WL 21957378 (E.D. Va., Aug. 7, 2003) (3-judge court), *appeal filed* Sept. 4, 2003. Historically in Alabama, a substantially larger black voter minority has been required to elect its preferred candidate if that candidate is an African American than if he is white. On the other hand, as noted above in the cases of Representatives Billy Beasley and Locy Baker, the preferred candidate of black voters has not always been an African American even in districts where the size of the black electorate is large enough to elect one.

Republicans will swap places in the driver's seat of the legislature even without such a judicially enforced mandate. But the more nearly permanent racial and ethnic minorities would forever lose much of the leverage they recently deployed in Alabama to be part of the governing majority, because white partisans would not have as strong an incentive to join inter-racial coalitions.

Indeed, reconciling the doctrinal tensions between racial and partisan gerrymandering was central to the several opinions in *Davis v. Bandemer*, 478 U.S. 109 (1986), including Justice White's plurality opinion, which announced the partisan gerrymandering standard appellants now ask this Court to relax. It is likely no coincidence that *Bandemer* was handed down the same day as was *Thornburg v. Gingles*, which adopted the three-pronged test for at-large vote dilution under section 2 of the Voting Rights Act, 42 U.S.C. § 1973. 478 U.S. at 48-49 ("Stated succinctly, a bloc voting majority must *usually* be able to defeat candidates supported by a politically cohesive, geographically insular minority group.") (*citing, inter alia*, Blacksher and Menefee, *supra* note 2, at 34). Justice O'Connor's concurring opinion in *Gingles* complained that Justice Brennan's majority opinion gave too much weight to the three-pronged test and ignored other factors in the "totality of circumstances" constitutional standard of *White v. Regester*, 412 U.S. 755 (1973), that Congress had intended to restore in response to *City of Mobile v. Bolden*, 446 U.S. 55 (1980). *Gingles, supra*, 478 U.S. at 96-97 (O'Connor, J., concurring in the judgment). Specifically, Justice O'Connor pointed to *White v. Regester*'s emphasis on historical and social factors which interact to entrench the racial minority's disadvantage in the political process, and she referred to Justice White's plurality opinion in the companion *Bandemer* case:

> By showing both "a history of disproportionate results" and "strong indicia of lack of political power and the denial of fair representation," the plaintiffs in *White* met this standard, which, as emphasized just today, requires "a substantially greater showing of adverse effects than a mere lack of proportional representation to support a finding of unconstitutional vote dilution."

Gingles, supra, 478 U.S. at 98 (O'Connor, J., concurring in the judgment) (*quoting Davis v. Bandemer*, 478 U.S. at 169-170 (plurality opinion)).

In the years since *Gingles*, a majority of this Court has come to endorse Justice O'Connor's concerns and has restored emphasis on the totality of circumstances in § 2 vote dilution cases. *Johnson v. De Grandy*, 512 U.S. 997, 1013-14 (1994). This is the same totality of circumstances standard, with its dependence on historically and socially entrenched discrimination, that Justice White said non-racial partisan political groups must meet to obtain a constitutional remedy.

> Although [*Rogers v. Lodge*, 458 U.S. 613 (1982), and *White v. Regester*] involved racial groups, we believe that the principles developed in these cases would apply equally to claims by political groups in individual districts. We note, however, that the elements necessary to a successful vote dilution claim may be more difficult to prove in relation to a claim by a political group. For example, historical patterns of exclusion from the political processes, evidence which would support a vote dilution claim, are in general more likely to be present for a racial group than for a political group.

Bandemer, 478 U.S. at 131 n.12 (plurality opinion). Appellants complain that Justice White was right about the difficulty political parties would have meeting this demanding standard for judicial intervention in the redistricting process. They want an easier constitutional test than the one African Americans must meet. But they do

not address the potentially damaging impact their new constitutional rule would have on racial minorities. Would it place new limitations on the ability of protected groups to guard against dilution of their voting strength under the Voting Rights Act and the Fourteenth and Fifteenth Amendments? Certainly, in Alabama there is a real danger that the electoral influence of African-American voters would have to suffer to pay the cost of providing political parties the opportunity to achieve more nearly proportional representation. There is shameful and familiar irony in the prospect that African Americans, who for the first time in over four centuries on this continent have been able effectively to influence the political process at its crucial constituency-building stage, should immediately be barred constitutionally from doing it again.

III. THERE IS FUNDAMENTAL CONCEPTUAL CONFUSION IN THE LEGAL ARGUMENTS FOR A CONSTITUTIONAL BAR OF PARTISAN GERRYMANDERING.

Behind the arguably irreconcilable conflict explored in *Bandemer* and *Gingles* with respect to extending Fourteenth Amendment protection against both racial and partisan gerrymandering is the potential conflation of two separate concepts: racial vote dilution entails discrimination against a group of persons who share immutable, ancestral characteristics; partisan gerrymandering entails discrimination against persons who share views, opinions or preferences. The former group may or may not share views and preferences from election to election, but its group identity does not change. The latter group changes its identity as its shared views and preferences change. Which is to say that the most judicially unmanageable criterion in the *Bandemer* standard is defining the "identifiable political group" whose rights allegedly have been

violated by the partisan gerrymander. *Bandemer*, 478 U.S. at 127 (plurality opinion); *id.* at 161 (Powell, J., concurring in part and dissenting in part). Are they only, as Justice White suggested, "a group of individuals who votes for a losing candidate"? *Id.* at 132. Would all those who voted for the losing candidate consider themselves to be Democrats or Republicans? Are they the same persons who formed the group who voted for the losing party's candidates in the preceding election and in the election before that? Are they the same persons who voted for other candidates nominated by the party? Must party affiliation be trans-generational to be constitutionally significant? This is a particularly relevant question for the South, which little more than one generation ago was "solid" for Democratic candidates, where from the Civil War until sometime around 1964 there was effectively only one party, and it stood for white supremacy. Until Franklin Roosevelt's presidency, those few African Americans in the South who were allowed to vote reliably supported the Republican candidates.[7]

Disagreements about how to define the identifiable political group victimized by partisan gerrymandering lie at the heart of the small cottage industry that emerged in academia following the *Bandemer* decision. *E.g.*, *see* BERNARD GROFMAN (ED.), POLITICAL GERRYMANDERING AND THE COURTS (1990) (collecting the competing views of over a dozen political scientists and law professors). The most

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[7] *E.g., see generally* J. MORGAN KOUSSER, COLORBLIND INJUSTICE: MINORITY VOTING RIGHTS AND THE UNDOING OF THE SECOND RECONSTRUCTION (1999); MARK V. TUSHNET, MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936-1961 (1994); J. MORGAN KOUSSER, THE SHAPING OF SOUTHERN POLITICS: SUFFRAGE RESTRICTION AND THE ESTABLISHMENT OF THE ONE-PARTY SOUTH, 1880-1910 (1974).

careful, in-depth analysis of the *Bandemer* opinions can be found in the dialogue between Professors Grofman and Lowenstein. *Compare* Bernard Grofman, *Toward a Coherent Theory of Gerrymandering: Bandemer and Thornburg*, in GROFMAN, POLITICAL GERRYMANDERING AND THE COURTS, *supra*, at 29, with Daniel Hays Lowenstein, *Bandemer's Gap: Gerrymandering and Equal Protection*, in GROFMAN, POLITICAL GERRYMANDERING AND THE COURTS, *supra*, at 64. With due respect for the thoughtful good intentions of Professor Grofman, it is Professor Lowenstein who perceives the conceptual confusion at the controversy's bottom and gets it right. Lowenstein correctly points out that this Court's constitutional jurisprudence dealing with electoral structures is grounded in the equal protection right of the individual citizen not to be discriminated against systematically on the basis of her membership in a suspect classification, as defined, for example, by the Fifteenth Amendment, or by arithmetically undervaluing her vote by classifying her on the basis of geographical residence, as prohibited by *Reynolds*. Lowenstein, *Bandemer's Gap, supra*, at 70-73. Citizens who give their support to a political party do not ordinarily fall in either classification. *Id.* at 75. Justice White's plurality opinion, Lowenstein argues, merely left open the possibility that the voter's political affiliation may correlate, through historical and social circumstances, with her membership in a suspect classification. *Id.* at 82.[8]

[8] Professor Lowenstein tries to hypothesize a situation in which a party supported by a minority of voters so successfully gerrymanders the state legislature that it totally blocks the ability to govern of officers elected to the other branches of government by the majority party's supporters. *Id.* at 88. He opines that, notwithstanding the absence of any constitutional cause of action based on the protection of fundamental rights or suspect classifications, this "Court should and would, if

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One amicus brief argues that the problem of indeterminacy of an identifiable partisan political group can be solved by addressing gerrymandering claims strictly as violations of individual rights rather than as violations of group rights. Brief of the Center for Research into Governmental Processes, Inc. as Amicus Curiae in Support of Appellants at 26. But such an atomizing approach would transform the nature of alleged gerrymanders from encroachments on the rights of members of protected classes to a failure accurately to aggregate individual opinions or preferences. Leaving aside the lack of any apparent constitutional basis for protecting individual preferences, the only way to maximize their aggregation is to install an election system designed to do that, which is what advocates of proportional representation urge. *See* Brief of the DKT Liberty Project as Amicus Curiae in Support of Appellants. As amicus concedes, the system of single-member Congressional districts prescribed by federal statute cannot possibly accomplish this task. Brief of the Center for Research into Governmental Processes, Inc., *supra*, at 27 n.8; *accord, e.g.*, Giovanni Sartori, *The Influence of Electoral Systems: Faulty Laws or Faulty Methods*, in BERNARD GROFMAN AND AREND LIJPHART (EDS.), ELECTORAL LAWS AND THEIR POLITICAL CONSEQUENCES 43, 53

confronted with the kind of breakdown I have hypothesized, find a way to restore democratic order." *Id.* at 89. However, Lowenstein does not suggest exactly what route this Court would take as it "blazed [a] new doctrinal trail[]." *Id.* In any event, no such situation is present in the Pennsylvania case *sub judice*. And in Alabama, such rigid partisan division almost never occurs. *E.g.*, David M. Halbfinger, *Alabama Voters Crush Tax Plan Sought by Governor*, THE NEW YORK TIMES, Sept. 10, 2003 (online edition) (reporting the voters' rejection of an historic tax reform plan proposed by the Republican Governor and passed through the Democratic controlled Legislature over the opposition of many Republicans).

(1986) ("The plurality [single-member district] formula (the first-past-the-post system) disregards proportions and represents, in principle, the very negation of proportionalism.").

There is no avoiding the problem of defining the identifiable political group allegedly injured by partisan gerrymandering. It has long been acknowledged that political parties in the United States are what political scientists call "cadre" parties, that is, political organizations controlled by relatively small groups of activists, including officeholders elected under the parties' banners, party officials and their paid consultants, who market their candidates to a mostly disengaged electorate. *See generally*, E.E. SCHATTSCHNEIDER, PARTY GOVERNMENT 53 (1942) ("Whatever else parties may be they are not associations of the voters who support candidates.") (*quoted in* Nancy L. Rosenblum, *Political Parties as Membership Groups*, 100 COLUM. L. REV. 813, 819 (2000)); DENISE L. BAER & DAVID A. BOSITIS, ELITE CADRES AND PARTY COALITIONS: REPRESENTING THE PUBLIC IN PARTY POLITICS (1988) (discussing the changing dynamics within party elites and between those elites and the electorate) (cited in Daniel Hays Lowenstein, *Associational Rights of Major Political Parties: A Skeptical Inquiry*, 71 TEX. L. REV. 1741, 1766 n.90 (1993)); Samuel Issacharoff, *Private Parties With Public Purposes: Political Parties, Associational Freedoms, and Partisan Competition*, 101 COLUM. L. REV. 274, 301 (2001). Even scholars who would valorize the role major political parties play in allowing voters to express their political identities acknowledge that roughly only a third of all voters strongly identify with the parties they vote for and that parties "are loose and decentralized voluntary associations." Rosenblum, *supra*, 100 COLUM. L. REV. at 818-20. Professor Rosenblum "concede[s] that party membership is not usefully defined in terms of registered party voters or primary voters. It is more plausible to

speak of membership as individuals increase their party involvement from partisanship to contributions, which are an express sign of association." *Id.* at 821.

So a threshold question is whether the constitutional jurisprudence this Court is being asked to create is primarily for the benefit of voters or for the benefit of party elites. Either way, the next question is whether the party and its purported constituents actually would benefit if they got what they asked for. Appellants are inviting this Court to resolve disputes about what constitutes fairness in the redistricting process that have evaded anything close to resolution for generations. Scholars cannot even agree on such foundational points as (1) whether there is a problem at all with respect to the ability of Republicans and Democrats to compete for control of the legislature; (2) if there is a problem, whether redistricting is to blame for it; (3) whether the creation of safe seats is a bad thing, and, if so, whether it can be avoided; and (4) whether neutral, nonpartisan redistricting standards and procedures are either theoretically or practically possible. *Compare* Samuel Issacharoff, *Gerrymandering and Political Cartels*, 116 HARV. L. REV. 593 (2002), *with* Nathaniel Persily, *In Defense of Foxes Guarding Henhouses: The Case for Judicial Acquiescence To Incumbent-Protecting Gerrymanders*, 116 HARV. L. REV. 649, 650 (2002). None of these foundational issues has been explored in depth in this Court's jurisprudence, notwithstanding the pejorative connotation the term gerrymandering has acquired in the case law.

Certainly, with respect to the fourth issue, there are not many scholars who disagree with Professor Persily's characterization of neutral, nonpartisan gerrymandering as a myth. *Id.*; *accord, e.g.*, Pamela S. Karlan and Daryl L. Levinson, *Why Voting Is Different*, 84 CAL. L. REV. 1201, 1202-03 (1996) ("unlike most governmental decisions, the selection of particular district lines is amenable to no

objective, neutral, or merit-based criteria that provide judicially discoverable and manageable standards").[9] In his *Bandemer* opinion, Justice White cited the work of the late Robert G. Dixon, Jr., "one of the foremost scholars of reapportionment," for the proposition "that there are no neutral lines for legislative districts . . . every line drawn aligns partisans and interest blocs in a particular way different from the alignment that would result from putting the line in some other place." 478 U.S. at 129 n.10 (*quoting* Robert G. Dixon, *Fair Criteria and Procedures for Establishing Legislative Districts* 7-8, in REPRESENTATION AND REDISTRICTING ISSUES (B. Grofman, A. Lijphart, R. McKay, & H. Scarrow eds. 1982)). Elsewhere, Professor Dixon rebuked those of his colleagues who aspire to discover universal principles of fair representation: "My own experience tells me that although I may find nonpartisanship in heaven, in the real world, and especially in academia, there are no nonpartisans, although there may be noncombatants." Robert G. Dixon, *Fair Criteria and Procedures for Establishing Legislative Districts*, 9 POL'Y STUD. J. 839, 840 (1981).

[9] Specifically addressing the "most important factors" Justice Powell thought should guide legislative redistricting, namely, "the shapes of voting districts and adherence to established political subdivision boundaries," *Bandemer*, 478 U.S. at 173 (Powell, J., concurring in part and dissenting in part), Professor Lowenstein reports: "As Jonathan Steinberg and I have demonstrated, these criteria are not at all neutral in any normal sense of that term, since they disfavor a party whose voting strength is disproportionately concentrated in compact areas with municipal boundaries, and dispersed at less than majority levels throughout the rest of the state." Lowenstein, *Bandemer's Gap*, *supra*, at 93.

IV. THE NEW PARTISAN GERRYMANDERING RULE PROPOSED BY APPELLANTS IS CONTRARY BOTH TO THE EXPRESS TERMS OF THE CONSTITUTION AND TO THE HISTORICAL UNDERSTANDING OF THOSE TERMS.

If the briefs of appellants and other amici prove anything, it is that no one to date has been able to disprove Justice O'Connor's assertion in *Bandemer* that partisan gerrymandering claims are inherently nonjusticiable. Their efforts to do so flounder primarily for the lack of any historical support. They are asking this Court to ignore Justice Stewart's admonition in *City of Mobile v. Bolden* that, no matter what one's view of equal protection is "as a matter of political theory," unless it comports with one of the historical understandings of the Constitution, it slips into "judicial inventiveness that would go 'far toward making this Court a super-legislature.'" 446 U.S. 55, 75-76 (1980) (*quoting Shapiro v. Thompson*, 394 U.S. 618, 661 (1969) (Harlan, J., dissenting)).

One of the amicus briefs expresses the view of four historians who look to the founding generation for support of the proposition that "when state legislative majorities have consciously designed districts not only to preserve safe seats for their own party but to turn a minority of the popular vote into a supermajority of congressional seats," it violates a principle they say is embedded in Article I of the Constitution that members of the House should be elected in a way that "mirrors" representation of the people. Brief of Amici Curiae Jack N. Rakove, Alexander Keyssar, Peter S. Onuf and Rosemarie Zagarri in Support of Appellants at 25-26. But the constitutional rule they ask this Court to adopt is contrary both to their published descriptions of the Founders' intent and to the Founders' decision to entrust correction of alleged redistricting abuses to Congress. Professor Rakove's definitive treatise,

for example, concludes the chapter on "The Mirror of Representation" as follows:

> The Constitution made no effort to reduce or regulate the size of the national electorate; or to impose significant qualifications on eligibility for office; or even to determine how national elections were to be conducted. By basing the House of Representatives on the existing electorates of the states, the framers shrewdly defused a potentially powerful objection against the Constitution. But by allowing the state legislatures so much discretion in setting electoral rules, they left the national government susceptible to both the aspirations and the abuses of democratic politics. That politics sometimes widened the claims for inclusion well beyond the propertied freeholders whom Madison idealized; but it also perpetuated unjust distortions in the form of the suffrage restrictions and gross malapportionment that proved so effective from the late nineteenth century until the 1960s. . . . Given this ambiguous legacy, it is not surprising that disputes over how the mirror of representation is best polished remain as difficult to resolve today as they were contentious in 1787.

JACK N. RAKOVE, ORIGINAL MEANINGS: POLITICS AND IDEAS IN THE MAKING OF THE CONSTITUTION 243 (1997). The historians' brief concedes that the roles of political parties, which did not emerge until the Jacksonian era, were anticipated by the Founders only to the extent of a profound distrust of mass electorates, majoritarianism and political factions that were expressed by Madison and the Federalists. Instead of constitutional rules refereeing partisan dynamics and demanding fairness for the supporters of both parties, Madison would have preferred that parties be eliminated altogether. *See* Issacharoff, *Private Parties With Public Purposes*, *supra*, at 301 ("The emergence of these parties was, of course, all the more striking

for the extreme hostility of the founding generation to what were seen as permanent factions."). Professor Rakove notes that the Federalists in the Constitutional Convention "could easily have pressed the case for incorporating a suitable rule in the Constitution . . . requiring the *states* to apportion seats on an equitable basis." RAKOVE, ORIGINAL MEANINGS, *supra*, at 223 (emphasis in original). Instead, the Founders chose to "enable *Congress* to intervene against acts of injustice within the states (though in this case the object of regulation would be a factious minority improperly holding on to power)." *Id.* at 224 (emphasis added).

The historians' brief does not mention the fact that the dominant issue in the 1787 Convention, the issue that controlled the compromise over representation in both the Senate and the House of Representatives, was slavery. Rakove quotes the proceedings in which Madison said: "But he contended that the states were divided into different interests not by their difference of size but by other circumstances; the most material of which resulted partly from climate, but principally from <the effects of> their having or not having slaves." *Id.* at 69. Once the delegates compromised on apportionment of seats in the House of Representatives based on a population formula in which slaves would be counted as three-fifths persons, the pace of proceedings quickened because of "the recognition that the Convention would end in agreement rather than dissension." *Id.* at 83.

> The three-fifths clause, then, was neither a coefficient of racial hierarchy nor a portent of the racialist thinking of the next century. It was rather the closest approximation in the Constitution to the principle of one person, one vote – even if in its origins it was only a formula for apportioning representation *among*, as opposed to

> *within*, states, and even if it violated the principle of equality by overvaluing the suffrage of the free male population of the slave states.

Id. at 74 (emphasis in original). Discrimination against African Americans thus dominated the Founders' understanding of which "people" would be "mirrored" in Congress. "The franchise excluded not only the dependent classes of the unpropertied but a whole species of population whose bondage gave vivid meaning to the familiar definition of slavery as a condition in which laws were imposed on the governed without their consent." *Id.* at 212.

Professor Keyssar's recent treatise describes how the Reconstruction Congress rekindled a constitutional debate over voting rights for "the first time since the constitutional convention in Philadelphia," and why, for reasons of both ethnicity and class, the Fifteenth Amendment prohibited the states from denying the franchise on account of race but did not entrench the right to vote for all citizens. ALEXANDER KEYSSAR, THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES 93-104 (2000). In his view, that is why this Court turned to the Fourteenth Amendment in the 1960s to establish the rule of population equality. "The Court's use of the equal protection clause was, in effect, a means of extending the ban on racial bars stated explicitly in the Fifteenth Amendment to other forms of discriminatory disfranchisement not expressly mentioned in the Constitution." *Id.* at 283.[10] Keyssar concedes that, however well it has enjoyed popular acceptance since *Reynolds v. Sims*,[11] even

[10] *Accord*, Blacksher and Menefee, *supra* note 2.

[11] *See* Lowenstein, *Bandemer's Gap*, *supra*, at 65 (summarizing the immediate post-*Reynolds* reaction).

the principle of one person, one vote does not derive from the Founders' original intent:

> Justices Frankfurter and Harlan surely were correct that neither the founding fathers nor the authors of the Fourteenth Amendment believed that an arithmetic equality of votes had to underlie all schemes of representation. The justices also were on solid ground in claiming that it was not irrational for states to factor in other considerations (such as geography or balancing rural versus urban interests) in devising systems of representation, and that these were essentially political matters or questions of political philosophy that belonged more appropriately in the hands of elected legislators than the judiciary.

ALEXANDER KEYSSAR, THE RIGHT TO VOTE, *supra*, at 186-87. According to Professor Keyssar, "the sweep of history suggests that democracy should not be imagined or understood as a static condition or a fixed set of rules and institutions; it may be more valuable – and accurate – to think instead of democracy as a project." *Id.* at 323. Nowhere does he suggest that courts should probe even deeper in the political thicket to regulate partisan redistricting. To the contrary, he thinks "[i]t would, alas, be utopian to expect that such conflicts will ever subside: that any tamperproof set of rules or institutions can be devised. . . . " *Id.* Certainly, read in its entirety, Keyssar's excellent narrative of how the right to vote has evolved in the United States leaves no doubt that, from the standpoint of history, it would be a travesty to subordinate to concerns of partisan fairness the ability of African Americans and other racial and ethnic minorities to participate

equally in the political process and to elect candidates of their choice.[12]

CONCLUSION

These amicus parties contend that neither appellants nor any of the amicus briefs in support of appellants have demonstrated that there are justiciable standards for adjudicating claims of strictly partisan gerrymandering of Congressional and other legislative districts. If this Court does not reverse the holding of *Davis v. Bandemer* that it is possible to articulate a justiciable partisan gerrymandering claim, we urge the Court to retain the burden of proof placed on partisan plaintiffs by the *Bandemer* plurality. Should this Court decide to modify the *Bandemer* standard, it should take care to do so in a way that does not diminish the constitutional and statutory voting rights of protected minorities and that does not subordinate the ability of African Americans to participate in the political process to the interests of party factions.

Respectfully submitted,

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[12] James U. Blacksher, *American Political Identity and History*, 95 NW. U. L. REV. 715 (2001) (reviewing ALEXANDER KEYSSAR, THE RIGHT TO VOTE, *supra*).

(2)

No. 02-1580

IN THE

Supreme Court of the United States

RICHARD VIETH, *et al.*
Appellants,

v.

ROBERT C. JUBELIRER AND JOHN M. PERZEL, *et al.*,
Appellees.

On Appeal from the United States District Court for the Middle District of Pennsylvania

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SUPPLEMENTAL ANALYSIS OF PARTISAN BIAS

BY
THOMAS L. BRUNELL

PLAINTIFF'S
EXHIBIT
11

I reviewed the partisan bias sections in the reports of Professors Lichtman and Katz, and I thought it would be useful to test their conclusions using methods similar to those used by Professor Katz. Instead of using Congressional elections results, which have complications of incumbency and variance across races in terms of campaign finance, candidate quality, and a whole host of other variables, I used statewide election results to calculate the relationship between seats and votes. Thus, each voter in every congressional district is voting on the exact same race. Examining the data this way avoids the problems and complications faced by using Congressional election data.

Figure 1. The "Cube Law," Hypothetical Relationship Between Seats and Votes in a Single Member District, Plurality Electoral System

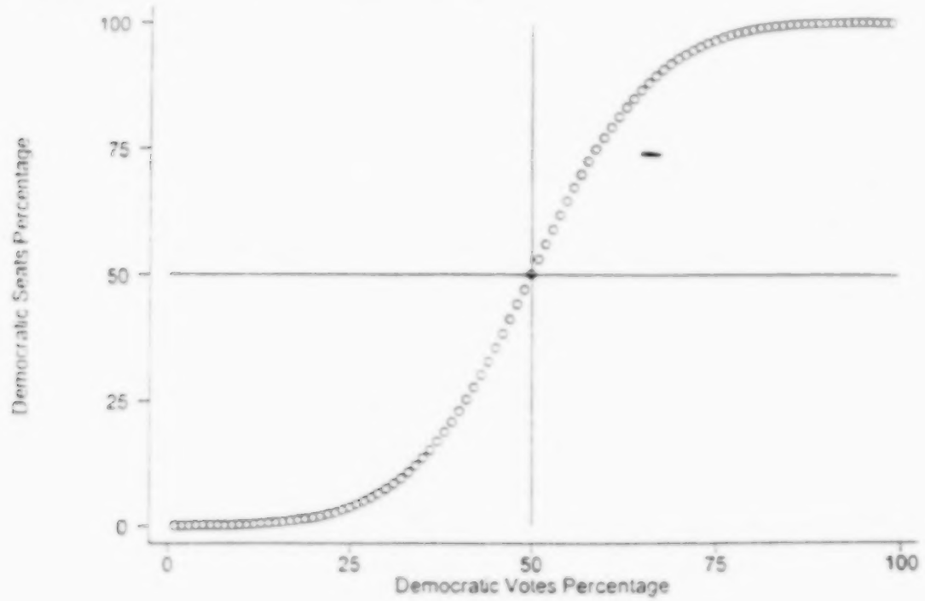

Figure 1 depicts a hypothetical relationship between seats and votes. It displays the relationship between seats and votes in an electoral system in which outcomes are described by the "cube law." This is a reasonable description of the relationship between seats and votes in a single member district system like the one at work for U.S. Congressional elections. The vote share is on the x-axis and the seat share is on the y-axis. Moving from left to right horizontally, as the proportion of a party's share of the vote over all districts increases, so too does their share of the seats. However, in a single member district system like the one in the United States, this relationship is not strictly linear. The rate at which the proportion of seats changes varies drastically. For instance, a party that gets 20 percent of the votes statewide can reasonably expect to get nearly

zero percent of the seats.[1] This is easy to imagine, particularly if the party gets exactly twenty percent of the vote in every single district. If a party receives less than 50 percent of the vote they can count on winning proportionally fewer seats relative to their share of the vote. The obverse is also true. The party that wins a majority of the votes, let's say 55 percent of the vote overall, can count on getting an even greater share of the seats. In this hypothetical relationship, the party that gets 55 percent of the vote receives nearly 65 percent of the seats.

It is important to note that the line cross the point at 50-50. That is, if the two parties split the vote 50-50, they also each get 50 percent of the seats. The political science literature refers to deviations from this ideal as "partisan bias." If a party gets 55 percent of the seats with only 45 percent of the votes (which means the other party gets a majority of the votes and less than a majority of the seats) then the plan is not fair to each of the parties. There is an inherent bias in the plan that favors one party, at the expense of the other party. Thus, we expect in a plan fair to both parties for all of the "dots" which each represent one election to be in either the upper right quadrant or the lower left quadrant. Both of those quadrants represent the area of the graph in which a majority of the congressional districts were won by the party that also received the overall majority of the votes. This is known as the majoritarian principle.

We can examine the seats votes curve under the current congressional district map, as well as some of the proposed districts as well. I asked the Texas Legislative Council (TLC) to provide me with data for all statewide elections in Texas from 1992-2000 broken down by Congressional district for the current plan as well as for some of the proposed plans before the Court. In order to create these graphs the following set of tasks were carried out:

1) Take the statewide Democratic Party share of the two-party vote in percentage terms. Which means this is done by dividing the number of votes for the Democratic candidate by the sum of the number of votes for the Democrat and the number of votes for the Republican. So the 1992 vote share for Clinton in Texas is not 37.1 percent, which is his overall share of the vote, but 47.4 percent of the two party vote (Clinton received 2,265,878 votes, while President Bush received 2,484,116 votes).
2) Count the number of districts in which the Democratic candidate received a majority of the votes (or a plurality in the case of a three-person race).
3) Divided the number of congressional districts won by the Democrat by the total number of congressional districts (30 in the case of the current plan, and 32 districts for the proposed plan).

All of the graphs that follow are based on the 48 statewide votes in Texas between 1992 and 2000 (this includes Presidential election results in Texas). Results show that the current plan is systematically biased in favor of the Democrats. The graphs also indicate a pro-Democratic bias in plans 1021, 1040, and 1048. Of the plans examined, 1046 is the only plan that adheres to the majoritarian principle and indicates no discernible partisan bias for either party in the statewide election data between 1992 and 2000.

[1] This is roughly what happened to Ross Perot in the 1992 Presidential campaign. He received nearly 20 percent of the vote nationwide, yet he did not win a single Electoral College vote, because he failed to get a plurality of the popular vote in any single state.

Figure 2 Seats-Votes Curve for Current Congressional District Lines (Plan 1000)

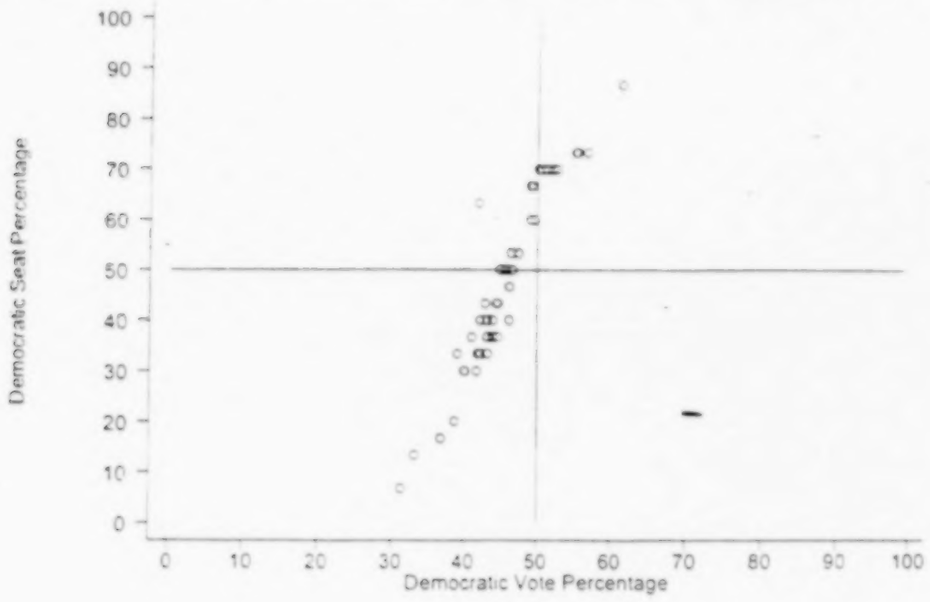

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Figure 3. Seats-Votes Curve for Speaker Laney's Proposed Congressional District Lines (Plan 1021)

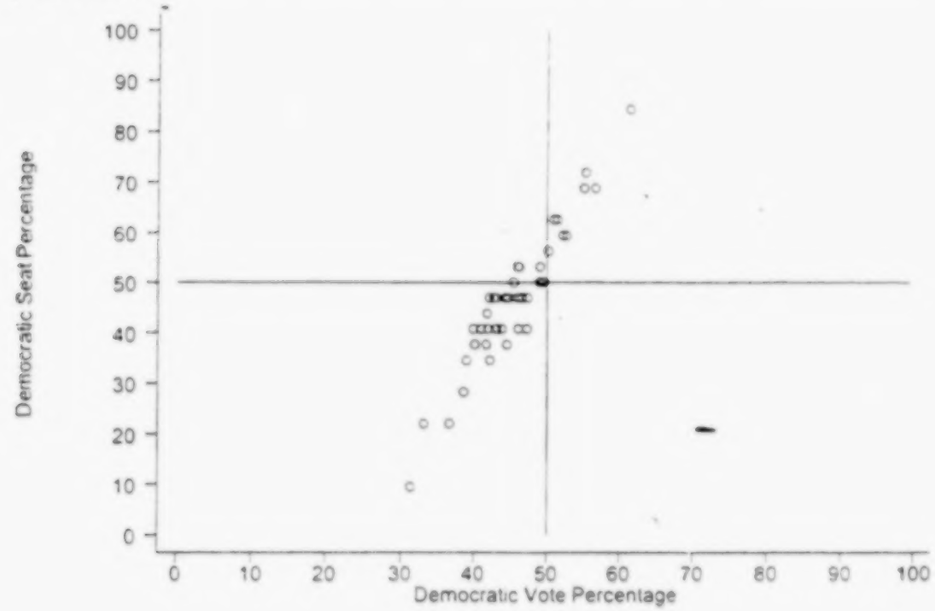

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Figure 4. Seats-Votes Curve for Malcolm et al.'s Proposed Congressional District Lines (Plan 1040)

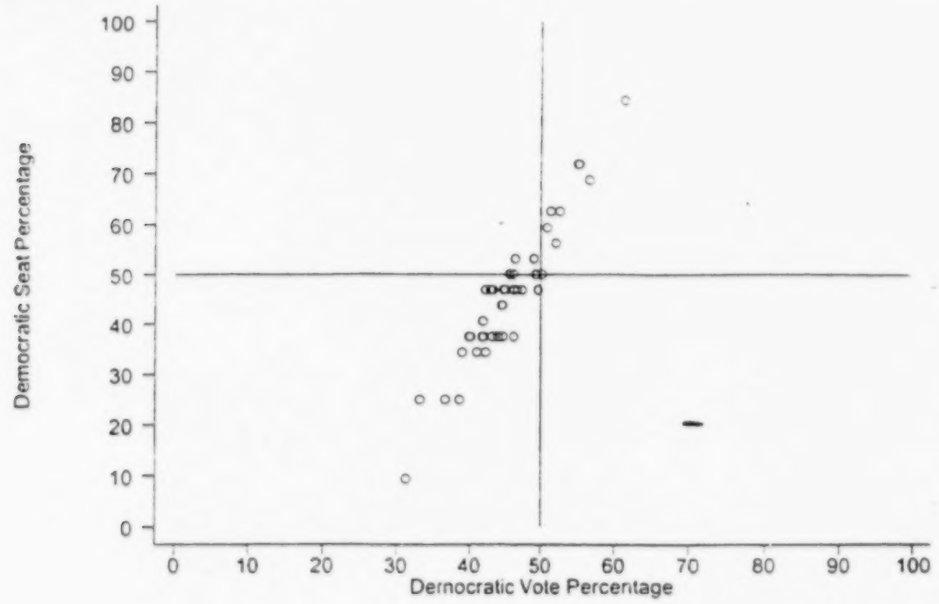

Figure 5. Seats-Votes Curve for MALDEF's Proposed Congressional District Lines (Plan 1048)

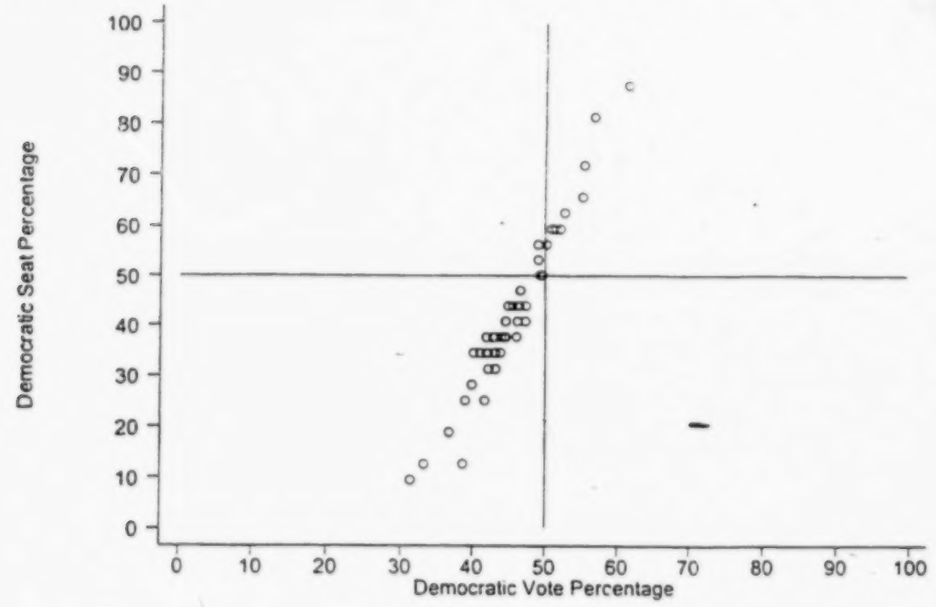

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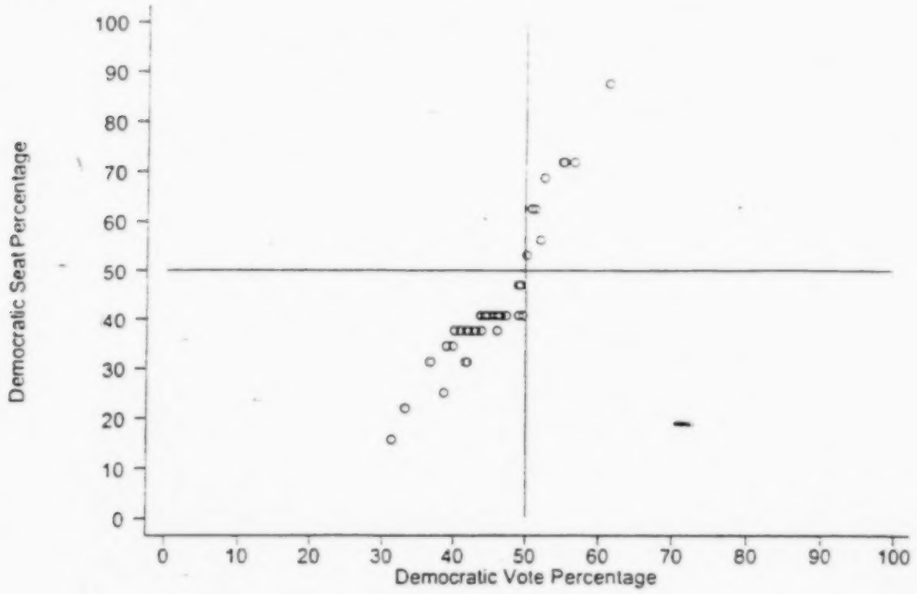
Figure 6. Seats-Votes Curve for ART's Proposed Congressional District Lines (Plan 1046)



8

COMMONWEALTH OF PENNSYLVANIA

Legislative Journal

MONDAY, DECEMBER 10, 2001

SESSION OF 2001 185TH OF THE GENERAL ASSEMBLY No. 62

SENATE

MONDAY, December 10, 2001

The Senate met at 2 p.m., Eastern Standard Time.

The PRESIDENT (Lieutenant Governor Robert C. Jubelirer) in the Chair.

PRAYER

The Chaplain, Reverend ROBERT STEVENS, Jr., of Zion Reformed United Church of Christ, Allentown, offered the following prayer:

Let us pray.

Almighty God, fountain of wisdom and light, whose will is good and gracious and whose law is truth and love, we are grateful for all the signs of Your blessings to us. We thank You for words of encouragement that lift our spirits when we are low, for colleagues who challenge us to think and work at our best, for fresh insights that come to mind when we are faced with difficult decisions, for friends who make our days easier with laughter and fun, and for the myriad benefits of science and the arts that enrich our lives every day.

We give You thanks that the holidays, celebrated within our different traditions, bring us such joy. O God, You alone know how much we Americans need to celebrate this year. Many people still are struggling with their grief, others are worried about terrorism, and some already are weary of the war against it. Though it seems to us that our world has changed in just a few weeks' time, yet we know this one thing has not changed: You are our refuge and our strength, a very present help to us all.

So, we pray for the people of our nation as well as this Commonwealth, that the faith and joy common to our different traditions will inspire and motivate us all to redouble our efforts to work together for the common good.

We thank You for the opportunity to serve the public good, to serve purposes larger than ourselves, and we pray that You empower us to persevere in good works when a difficult task seems interminable. We unite our minds and hearts to pray for all those who serve in elected office and for all those who serve on their staffs. Give them the courage, the wisdom, and foresight to provide for the needs of all our people. Direct the deliberations and decisions of this Senate, that a spirit of wisdom and charity, justice and truth continues to be practiced among us.

Bless our Commonwealth with honorable industry, with sound education, and with prosperity that extends its benefits to all of our citizens. Save us from violence, destructive conflict, and confusion. O God, we acknowledge our dependence upon You for wisdom and guidance, we acknowledge our dependence upon You for life and all its blessings, so we also acknowledge our obligation to You to serve with integrity and to be good stewards of the powers entrusted to us.

Blessed are You, O Lord our God, giver of peace. Bring peace to us all. Amen.

The PRESIDENT. The Chair thanks Reverend Stevens, who is the guest today of Senator Dent.

JOURNAL APPROVED

The PRESIDENT. A quorum of the Senate being present, the Clerk will read the Journal of the preceding Session of December 5, 2001.

The Clerk proceeded to read the Journal of the preceding Session, when, on motion of Senator BRIGHTBILL, and agreed to by voice vote, further reading was dispensed with and the Journal was approved.

COMMUNICATIONS FROM THE GOVERNOR

NOMINATIONS REFERRED TO COMMITTEE

The PRESIDENT laid before the Senate the following communications in writing from His Excellency, the Governor of the Commonwealth, which were read as follows and referred to the Committee on Rules and Executive Nominations:

MEMBER OF THE ARCHITECTS
LICENSURE BOARD

December 6, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Kyle Kinsman, AIA, 82 South Main Street, Wilkes-Barre 18701, Luzerne County, Fourteenth Senatorial District, for appointment as a member of the Architects Licensure Board, to serve for a term of four years or until his successor is appointed and qualified, but not longer than six months beyond that period, vice Dennis L. Astorino, Upper St. Clair, whose term expired.

Mark S. Schweiker
Governor

MEMBER OF THE ARCHITECTS
LICENSURE BOARD

December 6, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Dionysios G. Rassias, (Public Member), 3 Southview Path, Chadds Ford 19317, Delaware County, Ninth Senatorial District, for appointment as a member of the Architects Licensure Board, to serve for a term of four years or until his successor is appointed and qualified, but not longer than six months beyond that period, vice Carolyn Welsh, Chadds Ford, resigned.

Mark S. Schweiker
Governor

MEMBER OF THE STATE BOARD
OF LANDSCAPE ARCHITECTS

December 6, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Richard G. Stauffer, 595 Netzley Drive, Denver 17517, Lancaster County, Thirty-sixth Senatorial District, for reappointment as a member of the State Board of Landscape Architects, to serve for a term of three years and until his successor is appointed and qualified, but not longer than six months beyond that period.

Mark S. Schweiker
Governor

MEMBER OF THE STATE
TRANSPORTATION COMMISSION

December 6, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Sharon L. Knoll, 955 Persimmon Court, Fairview 16415, Erie County, Forty-ninth Senatorial District, for reappointment as a member of the State Transportation Commission, to serve for a term of six years and until her successor is appointed and qualified, but not longer than six months beyond that period.

Mark S. Schweiker
Governor

HOUSE MESSAGES

SENATE BILLS RETURNED WITH AMENDMENTS

The Clerk of the House of Representatives returned to the Senate **SB 421** and **907**, with the information the House has passed the same with amendments in which the concurrence of the Senate is requested.

The PRESIDENT. Pursuant to Senate Rule XIV, section 5, these bills will be referred to the Committee on Rules and Executive Nominations.

HOUSE BILLS FOR CONCURRENCE

The Clerk of the House of Representatives presented to the Senate the following bills for concurrence, which were referred to the committees indicated:

December 6, 2001

HB 1758 and **1958** – Committee on Transportation.
HB 2070 – Committee on Judiciary.

December 7, 2001

HB 110 – Committee on Local Government.
HB 481 – Committee on Labor and Industry.
HB 529, 1483, 1995, 2048, 2063, 2136 and **2163** – Committee on State Government.
HB 767 – Committee on Consumer Protection and Professional Licensure.
HB 957, 2149, 2150, 2151, and **2153** – Committee on Finance.
HB 1548, 1805, 1933, 1955, 1982, 2060 and **2088** – Committee on Judiciary.
HB 1809 – Committee on Agriculture and Rural Affairs.
HB 2013, 2164, 2165 and **2166** – Committee on Transportation.
HB 2152 – Committee on Banking and Insurance.

HOUSE RESOLUTIONS FOR CONCURRENCE

The Clerk of the House of Representatives presented to the Senate the following resolutions for concurrence, which were referred to the committees indicated:

December 7, 2001

HCR 53 – Committee on Intergovernmental Affairs.
HCR 366 – Committee on Communications and High Technology.

BILLS INTRODUCED AND REFERRED

The PRESIDENT laid before the Senate the following Senate Bills numbered, entitled, and referred as follows, which were read by the Clerk:

December 6, 2001

Senators WOZNIAK, O'PAKE, MUSTO, KUKOVICH, D. WHITE, HUGHES, ORIE, LAVALLE, ERICKSON, BOSCOLA, COSTA, EARLL, KASUNIC and STACK presented to the Chair **SB 1223**, entitled:

An Act amending the act of October 6, 1998 (P.L.705, No.92), known as the Keystone Opportunity Zone and Keystone Opportunity Expansion Zone Act, further providing for the zone authorization and duration of program.

Which was committed to the Committee on FINANCE, December 6, 2001.

Senators MUSTO, M. WHITE, HELFRICK, WAGNER, PUNT, ERICKSON, STOUT, ORIE, SCHWARTZ, LEMMOND, HOLL, BODACK, KUKOVICH, COSTA, MURPHY, BOSCOLA and KASUNIC presented to the Chair **SB 1231**, entitled:

An Act amending the act of June 23, 1982 (P.L.597, No.170), known as the Wild Resource Conservation Act, further providing for limitation on General Fund money.

Which was committed to the Committee on ENVIRONMENTAL RESOURCES AND ENERGY, December 6, 2001.

Senators BOSCOLA and COSTA presented to the Chair **SB 1232**, entitled:

A Joint Resolution proposing integrated amendments to the Constitution of the Commonwealth of Pennsylvania, further providing for disqualification to hold other office and for vacancy in the office of Lieutenant Governor.

Which was committed to the Committee on RULES AND EXECUTIVE NOMINATIONS, December 6, 2001.

Senators M. WHITE, JUBELIRER, EARLL, CORMAN, GREENLEAF and D. WHITE presented to the Chair **SB 1233**, entitled:

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for common-law marriage.

Which was committed to the Committee on JUDICIARY, December 6, 2001.

Senators CORMAN, MOWERY, LEMMOND, MUSTO, MURPHY and BOSCOLA presented to the Chair **SB 1236**, entitled:

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further defining "sale at retail" and "use" to exclude certain sales and uses related to telecommunications equipment and machinery; and defining "providing, delivering or rendering telecommunications service" and "Internet service."

Which was committed to the Committee on FINANCE, December 6, 2001.

Senators CORMAN, M. WHITE, THOMPSON, ARMSTRONG, SCHWARTZ, LEMMOND and MOWERY presented to the Chair **SB 1237**, entitled:

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further providing for rules relating to sourcing for the imposition of sales and use tax on mobile telecommunications services.

Which was committed to the Committee on FINANCE, December 6, 2001.

Senators CORMAN, ARMSTRONG, LAVALLE, LEMMOND, MURPHY, MUSTO, THOMPSON, WAUGH, M. WHITE and SCARNATI presented to the Chair **SB 1238**, entitled:

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further providing for certain crimes.

Which was committed to the Committee on FINANCE, December 6, 2001.

Senators PICCOLA, LEMMOND, CONTI, JUBELIRER, BRIGHTBILL, THOMPSON, WENGER, HELFRICK, RHOADES, TOMLINSON, GREENLEAF, GERLACH, M. WHITE, MURPHY, D. WHITE, MADIGAN, ERICKSON and HOLL presented to the Chair **SB 1240**, entitled:

An Act amending the act of June 30, 1995 (P.L.170, No.25), entitled "An act providing for voter registration, for registration commissions, for remedies and for absentee ballots; imposing penalties; making appropriations; and making repeals," further providing for the definitions of "district register," "general register," "qualified elector," "registrant," "registration records" and "Statewide Uniform Registry of Electors" or "SURE system," for departmental responsibilities, for commissions, for legislative intent, for establishment of SURE system, for qualifications to register, for in-person voter registration, for application with driver's license application, for application by mail, for time, for preparation and distribution of applications, for approval of registration applications, for general register, for district registers, for street lists, for public information lists, for retention of records, for removal notices, for transfer of registration, for court of common pleas, for registration, for votes, for official documents, for law enforcement assistance, for preventing registration, for approval of registration, for power of department, for removal of voters and for files; and providing for SURE system costs, for SURE registration number and for conversion of registration records.

Which was committed to the Committee on STATE GOVERNMENT, December 6, 2001.

Senators A. WILLIAMS, MELLOW, O'PAKE, WAGNER, MUSTO, KASUNIC, FUMO and STOUT presented to the Chair **SB 1241**, entitled:

An Act to apportion the Commonwealth of Pennsylvania into congressional districts in conformity with constitutional requirements; and providing for the nomination and election of Congressmen.

Which was committed to the Committee on STATE GOVERNMENT, December 6, 2001.

Senator HELFRICK presented to the Chair **SB 1242**, entitled:

An Act providing for the adoption of capital projects to be financed from current revenues of the Game Fund.

Which was committed to the Committee on GAME AND FISHERIES, December 6, 2001.

Senators HELFRICK, KASUNIC, ROBBINS and MADIGAN presented to the Chair **SB 1243**, entitled:

An Act amending Title 34 (Game) of the Pennsylvania Consolidated Statutes, further providing for the allocation of revenues within the Game Fund.

Which was committed to the Committee on GAME AND FISHERIES, December 6, 2001.

Senators EARLL, KUKOVICH, MADIGAN, GREENLEAF, MURPHY, LAVALLE, COSTA, BOSCOLA, HUGHES, ORIE and THOMPSON presented to the Chair **SB 1244**, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for unlawful contact or communication with minor.

Which was committed to the Committee on JUDICIARY, December 6, 2001.

December 10, 2001

Senators M. WHITE, GREENLEAF, BELL, COSTA, THOMPSON, LAVALLE, MOWERY, WAUGH and LEMMOND presented to the Chair **SB 1235**, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further defining "child"; and providing for hearings for sexual offenses.

Which was committed to the Committee on JUDICIARY, December 10, 2001.

Senators HOLL, WENGER, M. WHITE, ARMSTRONG, LEMMOND, THOMPSON, MURPHY, SCHWARTZ and MOWERY presented to the Chair **SB 1245**, entitled:

An Act amending Title 37 (Historical and Museums) of the Pennsylvania Consolidated Statutes, further providing for the Pennsylvania Historical and Museum Commission, for powers and duties of the commission and for publications and reproductions; and making a repeal.

Which was committed to the Committee on STATE GOVERNMENT, December 10, 2001.

Senators TARTAGLIONE, HUGHES, LOGAN, BODACK, BOSCOLA, LAVALLE, STACK, KITCHEN, WOZNIAK, STOUT, KASUNIC, COSTA, O'PAKE, MELLOW, A. WILLIAMS, FUMO, KUKOVICH, C. WILLIAMS, WAGNER and MUSTO presented to the Chair **SB 1246**, entitled:

An Act amending the act of June 30, 1995 (P.L.170, No.25), known as the Pennsylvania Voter Registration Act, providing for a registry board; and further providing for definitions, for departmental responsibilities, for commissions, for legislative intent, for SURE system, for residence of electors, for application with driver's license application, for preparation and distribution of applications, for approval of registration applications, for challenges, for general register, for direct registers, for street lists, for public information lists, for transfer of registration, for disability, for death of registrant, for checkup of registers, for failure to vote, for altering registration, for official documents, for approval of registration, for power of department, for removal of voters and for files.

Which was committed to the Committee on STATE GOVERNMENT, December 10, 2001.

Senators WAGNER, STOUT, LAVALLE, COSTA, O'PAKE, MUSTO, C. WILLIAMS, LOGAN, MELLOW, KASUNIC and BOSCOLA presented to the Chair **SB 1247**, entitled:

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further providing for exclusion from the sales and use tax.

Which was committed to the Committee on FINANCE, December 10, 2001.

Senator CONTI presented to the Chair **SB 1248**, entitled:

An Act authorizing the Department of General Services, with the approval of the Department of Transportation and the Governor, to grant and convey to the Heritage Conservancy Inc., certain lands in the Borough of Doylestown, Bucks County.

Which was committed to the Committee on STATE GOVERNMENT, December 10, 2001.

APPOINTMENTS BY THE PRESIDENT PRO TEMPORE

The PRESIDENT. The Chair wishes to announce the President pro tempore has made the following appointments:

Mr. H. Lee Noble as a Commonwealth Trustee of the University of Pittsburgh.

Mr. Charles G. Wilker as a member of the Board of the Insurance Fraud Prevention Authority.

REPORTS FROM COMMITTEES

Senator LEMMOND, from the Committee on State Government, reported the following bill:

SB 1240 (Pr. No. 1607) (Amended)

An Act amending the act of June 30, 1995 (P.L.170, No.25), entitled "An act providing for voter registration, for registration commissions, for remedies and for absentee ballots; imposing penalties; making appropriations; and making repeals," further providing for the definitions of "district register," "general register," "qualified elector," "registrant," "registration records" and "Statewide Uniform Registry of Electors" or "SURE system," for departmental responsibilities, for commissions, for legislative intent, for establishment of SURE system, for qualifications to register, for in-person voter registration, for application with driver's license application, for application by mail, for time, for preparation and distribution of applications, for approval of registration applications, for general register, for district registers, for street lists, for public information lists, for retention of records, for removal notices, for transfer of registration, for court of common pleas, for registration, for votes, for official documents, for law enforcement assistance, for preventing registration, for approval of registration, for power of department, for removal of voters and for files; and providing for SURE system costs, for SURE registration number and for conversion of registration records.

Senator THOMPSON, from the Committee on Appropriations, reported the following bills:

SB 533 (Pr. No. 1382) (Rereported)

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for protection from abuse; and providing for appointing guardians for care-dependent persons.

HB 3 (Pr. No. 1032) (Rereported)

An Act establishing a unified workforce investment system; restructuring certain administrative functions, procedures and entities; transferring workforce development functions of Commonwealth agencies; establishing the Pennsylvania Workforce Investment Board; and authorizing local workforce investment boards.

HB 209 (Pr. No. 1872) (Rereported)

An Act providing for a program to assist public and private institutions of higher education to install sprinkler systems in dormitories.

HB 453 (Pr. No. 3034) (Amended) (Rereported)

An Act amending Title 51 (Military Affairs) of the Pennsylvania Consolidated Statutes, further providing for eligibility for paralyzed veteran's pension.

HB 476 (Pr. No. 2189) (Rereported)

An Act amending the act of August 6, 1941 (P.L.861, No.323), referred to as the Pennsylvania Board of Probation and Parole Law, further providing for membership of an advisory committee.

HB 1402 (Pr. No. 3035) (Amended) (Rereported)

An Act amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, further providing for the definition of "public utility" and for telecommunications services provided to State correctional institutions; and providing for limousine service in counties of the second class.

HB 1830 (Pr. No. 3036) (Amended) (Rereported)

An Act amending the act of November 18, 1968 (P.L.1052, No.322), known as the Sewage Treatment Plant and Waterworks Operators' Certification Act, amending the title; further providing for definitions, for the State Board for Certification of Sewage Treatment Plant and Waterworks, for certification, for professional engineers, for special certificates, for reciprocity, for suspension and revocation, for administrative procedure and judicial review, for fees, for operation of plants, for penalties and enforcement, and for civil relief; establishing the Certification Program Advisory Committee; providing for continuing education and for interim program authorization; and making editorial changes.

LEGISLATIVE LEAVES

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, I request a legislative leave for Senator Madigan.

The PRESIDENT. Senator Brightbill requests a legislative leave for Senator Madigan. Without objection, that leave will be granted.

The PRESIDENT. The Chair recognizes the gentleman from Berks, Senator O'Pake.

Senator O'PAKE. Mr. President, I request a temporary Capitol leave for Senator Schwartz.

The PRESIDENT. Senator O'Pake requests a temporary Capitol leave for Senator Schwartz. Without objection, that leave will be granted.

LEAVE OF ABSENCE

Senator BRIGHTBILL asked and obtained a leave of absence for today's Session, for Senator BELL, for personal reasons.

SENATE CONCURRENT RESOLUTION

RECESS ADJOURNMENT

Senator BRIGHTBILL offered the following resolution, which was read as follows:

In the Senate, December 10, 2001

RESOLVED, (the House of Representatives concurring), That when the Senate adjourns this week it reconvene on Tuesday, January 1, 2002, unless sooner recalled by the President Pro Tempore of the Senate; and be it further

RESOLVED, That when the Senate adjourns on January 1, 2002, it reconvene on Tuesday, January 22, 2002, unless sooner recalled by the President Pro Tempore of the Senate; and be it further

RESOLVED, That when the House of Representatives adjourns this week it reconvene on Tuesday, January 1, 2002, unless sooner recalled by the Speaker of the House of Representatives; and be it further

RESOLVED, That when the House of Representatives adjourns on January 1, 2002, it reconvene on Tuesday, January 22, 2002, unless sooner recalled by the Speaker of the House of Representatives.

On the question,
Will the Senate adopt the resolution?

The yeas and nays were required by Senator BRIGHTBILL and were as follows, viz:

YEA-49

Armstrong	Helfrick	Murphy	Thompson
Bodack	Holl	Musto	Tomlinson
Boscola	Hughes	O'Pake	Wagner
Brightbill	Jubelirer	Orie	Waugh
Conti	Kasunic	Piccola	Wenger
Corman	Kitchen	Punt	White, Donald
Costa	Kukovich	Rhoades	White, Mary Jo
Dent	LaValle	Robbins	Williams, Anthony H.
Earll	Lemmond	Scarnati	Williams, Constance
Erickson	Logan	Schwartz	Wozniak
Fumo	Madigan	Stack	
Gerlach	Mellow	Stout	
Greenleaf	Mowery	Tartaglione	

NAY-0

A majority of the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present the same to the House of Representatives for concurrence.

SPECIAL ORDER OF BUSINESS GUESTS OF SENATOR MARY JO WHITE AND SENATOR RICHARD A. KASUNIC PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentlewoman from Venango, Senator M. J. White.

Senator M. J. WHITE. Mr. President, we are joined today by some young people who are junior riflemen, part of the National Champion Junior Six-person Team from Pennsylvania who

received high scores at the National High-Powered Rifle Championship held at Camp Perry, Ohio. These young people range in age from 16 to 19.

I was told by one of the young men today that this is an NCAA recognized sport, and these young people are certainly proud representatives of the State of Pennsylvania. With us today are Senator Holl's constituent, Jeremy Branning; Adam Bester and his sister, Jessica Bester, both members of the team from my district; Calvin Roberts and Scott Roberts, who are in Senator Gerlach's district; and Senator Kasunic wanted to introduce his guest, as he knows him personally.

I would ask then, at the conclusion of his introduction, that we welcome all of the young people to the Senate of Pennsylvania.

The PRESIDENT. The Chair recognizes the gentleman from Fayette, Senator Kasunic.

Senator KASUNIC. Mr. President, it is my honor and privilege to introduce a young man, David Petrun, whom I have had the pleasure of watching grow up. He has certainly turned out to be a fine young man and a true example of what our American youth should be and are. He hails from Bullskin Township in Fayette County and is also being honored as a member of the six-person group of Junior High-Powered Rifle Shooters that captured the national championship and won the coveted Minuteman Trophy.

He is here today with his parents, Dave and Jane Petrun, and his brother, Greg.

The PRESIDENT. Would the guests of Senator M. J. White and Senator Kasunic kindly rise so that we may welcome you properly to the Senate of Pennsylvania.

(Applause.)

GUEST OF SENATOR ROBERT D. ROBBINS PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentleman from Mercer, Senator Robbins.

Senator ROBBINS. Mr. President, it gives me great pleasure today to introduce Zuzana Kleschtova, who is serving as a guest Page in the Senate today. She is a resident of Trnava, Slovakia, and is a senior at Comenius University, located in Bratislava.

Zuzana is currently an exchange student at Slippery Rock University, and she will return to Slovakia upon the completion of the school semester later this month. She is a member of the Internations Club at Slippery Rock University, the Youth Jesuit Choir in Bratislava, and her interests include playing the flute, reading books, and traveling.

Mr. President and fellow Members, please join me in welcoming my special guest to the Senate of Pennsylvania.

The PRESIDENT. Would the guest of Senator Robbins please rise so we may welcome you to the Senate of Pennsylvania.

(Applause.)

GUESTS OF SENATOR JOSEPH B. SCARNATI PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentleman from Jefferson, Senator Scarnati.

Senator SCARNATI. Mr. President, today I have two sets of guests here from my hometown of Brockway. The first set are two high school seniors who are here today for a communication project to interview a State Senator. They are two enthusiastic, bright young students, Nick Varischetti and Michelle Fremer.

My next set of visitors here today are very special to me. They are not only my business partners, but they are my parents. They are here to do a little Christmas shopping. So, I would certainly ask the Senate to give them a warm welcome.

The PRESIDENT. Would the guests of Senator Scarnati kindly rise so we may welcome you to the Senate of Pennsylvania.

(Applause.)

GUESTS OF SENATOR TERRY L. PUNT AND SENATOR RAPHAEL J. MUSTO PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentleman from Franklin, Senator Punt.

Senator PUNT. Senator Musto and I have several guests with us today, marking a very, very special occasion. Several years ago when the last BRACC Commission did their work, Letterkenny Army Depot in Franklin County was realigned. In part of that realignment process, we had a chapel located at Letterkenny that was dispositioned away from government property to be positioned elsewhere.

The chapel had a great uniqueness about it, in that during World War II, besides being an ammunition storage depot, Letterkenny also served as a camp for Italian prisoners of war. The Italian POWs who were detained at Letterkenny built this chapel while they were confined at Letterkenny. Over the years the chapel was in use, and since the BRACC realignment, it had deteriorated. So the Chambersburg community, particularly the United Churches of Chambersburg, took it upon themselves to take over ownership of the chapel and agreed to operate it and maintain it.

Now, with us today are members of the Letterkenny Chapel Committee from the United Churches of Chambersburg, whom I would like to recognize. At the head of the group is Reverend Dr. William Harter, Reverend Ray Kaufman, Mrs. Janet Kiel, Reverend Charles and Debbie McGuire, Reverend Richard Randall, Reverend Dr. Jeffrey Roth, and David Sciamanna, who is also the president of the Greater Chambersburg Chamber of Commerce, and also Samuel King is here with us. These individuals and their committee are responsible for operating the chapel, maintaining it, and leading the fund-driving effort.

Now, having said that, I would like to call upon Senator Musto, who has guests and a very important, special guest, part of the delegation of UNICO visiting with us today.

The PRESIDENT. The Chair recognizes the gentleman from Luzerne, Senator Musto.

Senator MUSTO. Mr. President, it is certainly a great honor for me to introduce to the Senate today the Italian-American Veterans of Luzerne County Post I and the Wilkes-Barre Chapter of UNICO National, headed by its president, Dominick Ortalani. Incidentally, UNICO is celebrating its 50th anniversary this year. UNICO members are Americans of Italian descent who promote the Italian heritage and offer humanitarian aid whenever and wherever needed. Their motto is "Service Above Self," and

UNICO stands for Unity, Neighborliness, Integrity, Charity, Opportunity.

Currently, they have joined hands with the United Churches of the Chambersburg area to lend financial aid to restore this great, historic Letterkenny Army Depot Chapel. This chapel was built by former Italian prisoners of war detained at the depot during World War II. Brigadier General Raymond Hare, the commanding officer, initiated the construction of this great project. Also with us today is one of the POWs instrumental in building the chapel, Dr. Alfred Tonolo, a retired professor of languages at Bloomsburg University.

Mr. President, I would appreciate the Senate's warm greeting for members of the Italian-American Veterans of Luzerne County Post I, and the Wilkes-Barre Chapter of UNICO National, and recognize at this time Dr. Alfred Tonolo for a few remarks.

The PRESIDENT. Would the guests on the floor who are the guests of Senator Musto and Senator Punt kindly rise so we may welcome you to the Senate of Pennsylvania.

(Applause.)

The Chair invites Dr. Tonolo to address the Senate at this time.

Dr. TONOLO. Good afternoon. Honorable Senator, Lieutenant Governor Jubelirer, and Honorable Senators, from the bottom of my heart, I want to thank each one of you for permitting me to stand before you. You have to know that I was an ex-Italian officer captured in Africa during the Second World War by the Americans. I was brought to America in October 1943, and they sent me to Waynegarten, Missouri. Over there, first permit me to say this, the first morning I went for breakfast, the cook asked me, how do you want your eggs? I could not believe it. And believe me on this, why am I saying this? Because I am not used to taking things for granted. Unfortunately, or fortunately, many Americans are taking things for granted. We have to build America. America is the leading country in the world. You have to believe this.

I want to take this opportunity to thank Senator Musto for helping us to preserve the church that we POWs built in Letterkenny in 1945. Thank you, Senator, very, very much. And thank you, each one of you. The only thing I am asking you, please pray that America can continue to be the leading country in this world.

God bless America and all of you. Thank you very much.

(Applause.)

The PRESIDENT. The Chair thanks Dr. Tonolo.

Senator Musto, thank you for bringing this distinguished group. They honor us all. Thank you all very much for being here. We are very proud to have you here.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, at this time I ask for a recess of the Senate for the purpose of a Republican caucus.

The PRESIDENT. The Chair recognizes the gentleman from Luzerne, Senator Musto.

Senator MUSTO. Mr. President, for the information of the Democrats, caucus will be held immediately.

The PRESIDENT. For purposes of Republican and Democratic caucuses to begin immediately in their respective caucus rooms, without objection, the Senate will stand in recess.

AFTER RECESS

The PRESIDENT. The time of recess having expired, the Senate will come to order.

CALENDAR

THIRD CONSIDERATION CALENDAR

BILL AMENDED

HB 212 (Pr. No. 1785) — The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 34 (Game) of the Pennsylvania Consolidated Statutes, further providing for the time periods of permits.

On the question,

Will the Senate agree to the bill on third consideration?

Senator CORMAN offered the following amendment No. A4639:

Amend Title, page 1, line 2, by inserting after "Statutes,": providing for the possession of shed antlers; and

Amend Sec. 1, page 1, line 5, by striking out "Section" where it appears the second time and inserting: Sections 2307(d) and

Amend Sec. 1, page 1, line 6, by striking out "is" and inserting: are

Amend Sec. 1, page 1, by inserting between lines 6 and 7:

2307. Unlawful taking or possession of game or wildlife.

* * *

(d) Exceptions.--This section shall not apply to [authorized]:

(1) Authorized individuals who euthanize critically injured game or wildlife, which shall be permitted when it is reasonable to believe that the chance of survival of the injured game or wildlife is minimal or the injured game or wildlife poses a threat to human safety.

(2) Individuals who find and retain for their own use any deer or elk antler which is shed through natural causes. This paragraph shall not be construed to permit any individual possessing a shed antler to sell, barter or trade or to offer to sell, barter or trade any shed antler.

* * *

Amend Bill, page 2, by inserting between lines 3 and 4:

Section 2. Any provision of 58 Pa. Code is abrogated insofar as that provision is contrary to the provisions of 34 Pa.C.S. § 2307(d)(2).

Amend Sec. 2, page 2, line 4, by striking out "2" and inserting: 3

On the question,

Will the Senate agree to the amendment?

It was agreed to.

On the question,

Will the Senate agree to the bill on third consideration, as amended?

Senator WAGNER, on behalf of Senator MELLOW, offered the following amendment No. A3979:

Amend Title, page 1, line 2, by removing the period after "permits" and inserting: , for permit fees, for records, for reports and for disabled person permits.

Amend Sec. 1, page 1, line 5, by striking out "Section 2903" and inserting: Sections 2903, 2904, 2906, 2907 and 2923(a)(1)

Amend Sec. 1, page 1, line 6, by striking out "is" and inserting: are

Amend Sec. 1, page 2, by inserting between lines 3 and 4:

§ 2904. Permit fees.

(a) Annual fees.–The annual fee for permits provided for in this chapter shall be as follows:

(1) Bird banding - $25.
(2) Collecting - $25.
(3) [Disabled person - $5 for the lifetime of the disabled person.]
(3.1) Temporary permit for disabled person - $5 for the license year.
(4) Dog training area - $50.
(5) Dog trials (three consecutive days):
(i) Field trials - $25 per day.
(ii) Raccoon trials - $25 per day.
(iii) Retriever trials - $25.
(6) Endangered or threatened species:
(i) Native - $300.
(ii) Non-native - free with necessary Federal permit.
(7) Falconry - $25 for each raptor held.
(8) Fox chasing - $150.
(9) Fur dealers:
(i) Resident - $100.
(ii) Nonresident - $300.
(10) Regulated hunting grounds:
(i) Commercial - $100 for first 100 acres and $25 for each additional 100 acres, or part thereof.
(ii) Noncommercial - $38 for first 100 acres and $8 for each additional 100 acres, or part thereof.
(11) Retriever training area - $50.
(12) Taxidermy - $100.
(13) Wildlife (exotic) dealer - $200.
(14) Wildlife menagerie - $100.
(15) Wildlife (exotic) possession - $50 per animal.
(16) Wildlife propagation - $25 for one species and $10 for each additional species.
(17) Commercial wildlife pest control - $50.

(b) Disabled permit fees.–The disabled permit fee for a disabled person shall be a one-time fee of $5, which is valid for the lifetime of the disabled person.

[(18)] (c) Other fees.–The commission shall set a reasonable fee for any permit required by this title which is not specifically set forth in this section.

§ 2906. Records.

Each permit holder shall keep accurate records of all transactions carried out under authority of the permit issued and any other information required by the director. The records for each year of a permit must be kept for a period of three years and shall be open to inspection by any officer of the commission during normal business hours and shall be the basis of any reports required by the commission.

§ 2907. Reports.

The director may require reports from any permit holder, except that no report may be required with respect to species of fox not indigenous to this Commonwealth. Annual reports shall be due within 30 days after expiration of the permit. For multiple-year permits, reports shall be submitted by July 30 of each year that the permit is in effect. The director may designate other times for reports if information is needed by the commission for its operations.

§ 2923. Disabled person permits.

(a) Use of vehicle as a blind.–

(1) Unless further restricted by commission regulation, a lifetime permit to hunt from a stationary vehicle may be issued to a person with permanent disabilities who qualified for a hunting license pursuant to Chapter 27 (relating to hunting and furtaking licenses) or who possesses a junior resident license under section 2705(2) (relating to classes of licenses) and who meets any of the following requirements:

(i) Has paraplegia and has permanent paralysis of both legs and lower parts of the body.
(ii) Has hemiplegia and has permanent paralysis of one leg and one arm on either side of the body.
(iii) Has both feet or one hand and one foot amputated.
(iv) Is permanently confined to a wheelchair or must use crutches or a walker as a means of support to pursue daily activities.
(v) Presents an affidavit and doctor's certificate stating the applicant is physically unable to walk 25 yards off the roadway.

On the question,
Will the Senate agree to the amendment?
It was agreed to.
Without objection, the bill, as amended, was passed over in its order at the request of Senator BRIGHTBILL.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 369 (Pr. No. 1567) – The Senate proceeded to consideration of the bill, entitled:

An Act amending Titles 18 (Crimes and Offenses) and 75 (Vehicles) of the Pennsylvania Consolidated Statutes, authorizing police officers to record certain oral communications; and further providing for windshield obstructions and wipers.

Considered the third time and agreed to,
And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-49

Armstrong	Helfrick	Murphy	Thompson
Bodack	Holl	Musto	Tomlinson
Boscola	Hughes	O'Pake	Wagner
Brightbill	Jubelirer	Orie	Waugh
Conti	Kasunic	Piccola	Wenger
Corman	Kitchen	Punt	White, Donald
Costa	Kukovich	Rhoades	White, Mary Jo
Dent	LaValle	Robbins	Williams, Anthony H.
Earll	Lemmond	Scarnati	Williams, Constance
Erickson	Logan	Schwartz	Wozniak
Fumo	Madigan	Stack	
Gerlach	Mellow	Stout	
Greenleaf	Mowery	Tartaglione	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

LEGISLATIVE LEAVE CANCELLED

The PRESIDENT. The Chair notes the presence on the floor of Senator Schwartz, and her temporary Capitol leave will be cancelled.

CONSIDERATION OF CALENDAR RESUMED

THIRD CONSIDERATION CALENDAR RESUMED

BILL OVER IN ORDER

SB 391 – Without objection, the bill was passed over in its order at the request of Senator BRIGHTBILL.

SB 965 CALLED UP OUT OF ORDER

SB 965 (Pr. No. 1538) – Without objection, the bill was called up out of order, from page 2 of the Third Consideration Calendar, by Senator BRIGHTBILL, as a Special Order of Business.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 965 (Pr. No. 1538) – The Senate proceeded to consideration of the bill, entitled:

An Act relating to the implementation of plans for redistricting the General Assembly.

Considered the third time and agreed to,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-49

Armstrong	Helfrick	Murphy	Thompson
Bodack	Holl	Musto	Tomlinson
Boscola	Hughes	O'Pake	Wagner
Brightbill	Jubelirer	Orie	Waugh
Conti	Kasunic	Piccola	Wenger
Corman	Kitchen	Punt	White, Donald
Costa	Kukovich	Rhoades	White, Mary Jo
Dent	LaValle	Robbins	Williams, Anthony H.
Earll	Lemmond	Scarnati	Williams, Constance
Erickson	Logan	Schwartz	Wozniak
Fumo	Madigan	Stack	
Gerlach	Mellow	Stout	
Greenleaf	Mowery	Tartaglione	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

BILL AMENDED

SB 413 (Pr. No. 1102) – The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, providing for Drug Education and Demand Reduction Fund; and imposing assessments.

On the question,
Will the Senate agree to the bill on third consideration?

Senator CORMAN offered the following amendment No. A3012:

Amend Title, page 1, line 2, by striking out "Drug" and inserting: Substance Abuse

Amend Sec. 1 (Sec. 7508.1), page 2, line 12, by striking out "Drug" and inserting: Substance Abuse

Amend Sec. 1 (Sec. 7508.1), page 2, line 13, by striking out "Drug" and inserting: Substance Abuse

Amend Sec. 1 (Sec. 7508.1), page 2, line 17, by striking out "and awards"

Amend Sec. 1 (Sec. 7508.1), page 3, line 6, by striking out "One thousand five hundred dollars" and inserting: $750

Amend Sec. 1 (Sec. 7508.1), page 3, line 8, by striking out "Seven hundred fifty dollars" and inserting: $375

Amend Sec. 1 (Sec. 7508.1), page 3, line 14, by striking out "Three hundred dollars" and inserting: $150

Amend Sec. 1 (Sec. 7508.1), page 3, line 16, by striking out "Four hundred dollars" and inserting: $200

Amend Sec. 1 (Sec. 7508.1), page 5, line 3, by striking out "Awards" and inserting: Grants

Amend Sec. 1 (Sec. 7508.1), page 5, lines 5 and 6, by striking out "make awards to the following" and inserting: award grants to

Amend Sec. 1 (Sec. 7508.1), page 5, line 6, by removing the colon after "organizations" and inserting: for the following types of programs:

Amend Sec. 1 (Sec. 7508.1), page 5, lines 7 through 30; page 6, lines 1 through 30; page 7, lines 1 through 14, by striking out all of said lines on said pages and inserting:

(1) Programs to provide prevention, training, treatment and education services to reduce alcohol abuse and driving under the influence of alcohol, programs to reduce driving under the influence of alcohol and programs to support victims of driving under the influence of alcohol or controlled substance offenses, and programs to establish student-peer leadership programs to prevent underage drinking are eligible to receive no more than 25% of grant moneys awarded annually.

(2) Programs to provide prevention, training, treatment and education services to reduce drug abuse are eligible to receive no more than 20% of grant moneys awarded annually.

(3) Programs to educate about the dangers of substance abuse and increase the awareness of the benefits of a drug-free Pennsylvania through public service announcement campaigns targeted toward youth, caregivers of youth and employers are eligible to receive no more than 15% of grant moneys awarded annually.

(4) Programs to educate employers, unions and employees about the dangers of substance abuse in the workplace and provide comprehensive drug-free workplace programs and technical resources for businesses including, but not limited to, training for working parents to keep their children drug free are eligible to receive no more than 15% of grant moneys awarded annually.

(k) Other use of fund moneys.–An amount equivalent to 20% of the grant moneys available to be awarded annually shall be transferred annually to the Community Drug Abuse Prevention Grant Program within the Office of Attorney General.

(l) Administration.–The commission shall develop guidelines, procedures and all applications necessary to implement the grant program. The commission may expend no more than 5% of the total deposited in the fund during a fiscal year to administer the grant program.

Amend Sec. 1 (Sec. 7508.1), page 7, line 15, by striking out "(n)" and inserting: (m)

Amend Sec. 1 (Sec. 7508.1), page 7, line 20, by striking out "(o)" and inserting: (n)

Amend Sec. 1 (Sec. 7508.1), page 7, lines 23 and 24, by striking out all of said lines

Amend Sec. 1 (Sec. 7508.1), page 8, lines 3 and 4, by striking out "A private, Statewide, community-based, nonprofit or county" and inserting: An

Amend Sec. 1 (Sec. 7508.1), page 8, line 7, by striking out "drug" and inserting: substance abuse
Amend Sec. 1 (Sec. 7508.1), page 8, line 12, by striking out "Drug" and inserting: Substance Abuse

On the question,
Will the Senate agree to the amendment?
It was agreed to.
Without objection, the bill, as amended, was passed over in its order at the request of Senator BRIGHTBILL.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 415 (Pr. No. 1534) – The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, extending the period of limitation in certain offenses when deoxyribonucleic acid (DNA) evidence establishes the identity of a defendant.

Considered the third time and agreed to,
And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-49

Armstrong	Helfrick	Murphy	Thompson
Bodack	Holl	Musto	Tomlinson
Boscola	Hughes	O'Pake	Wagner
Brightbill	Jubelirer	Orie	Waugh
Conti	Kasunic	Piccola	Wenger
Corman	Kitchen	Punt	White, Donald
Costa	Kukovich	Rhoades	White, Mary Jo
Dent	LaValle	Robbins	Williams, Anthony H.
Earll	Lemmond	Scarnati	Williams, Constance
Erickson	Logan	Schwartz	Wozniak
Fumo	Madigan	Stack	
Gerlach	Mellow	Stout	
Greenleaf	Mowery	Tartaglione	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

BILL AMENDED

HB 437 (Pr. No. 3000) – The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, adding provisions relating to the labeling, sale and distribution of fertilizer and of soil and plant amendments; providing for the powers and duties of the Department of Agriculture; establishing the Agronomic Regulatory Account; prescribing penalties; and making a repeal.

On the question,
Will the Senate agree to the bill on third consideration?
Senator BRIGHTBILL offered the following amendment No. A4794:

Amend Sec. 1 (Sec. 6725), page 19, lines 15 through 20, by striking out "All funds appropriated to the department" in line 15 and all of lines 16 through 20
Amend Sec. 2, page 35, by inserting between lines 23 and 24:
(c) All funds made available to the department pursuant to the act of May 29, 1956 (1955 P.L.1795, No.598), known as the Pennsylvania Fertilizer, Soil Conditioner and Plant Growth Substance Law, which remain unexpended, uncommitted and unencumbered as of the effective date of this act, shall be transferred to the Agronomic Regulatory Account.

On the question,
Will the Senate agree to the amendment?
It was agreed to.
Without objection, the bill, as amended, was passed over in its order at the request of Senator BRIGHTBILL.

BILLS ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 454 (Pr. No. 2967) – The Senate proceeded to consideration of the bill, entitled:

An Act requiring the Department of Health to establish bloodborne pathogen standards for public employees.

Considered the third time and agreed to,
And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-49

Armstrong	Helfrick	Murphy	Thompson
Bodack	Holl	Musto	Tomlinson
Boscola	Hughes	O'Pake	Wagner
Brightbill	Jubelirer	Orie	Waugh
Conti	Kasunic	Piccola	Wenger
Corman	Kitchen	Punt	White, Donald
Costa	Kukovich	Rhoades	White, Mary Jo
Dent	LaValle	Robbins	Williams, Anthony H.
Earll	Lemmond	Scarnati	Williams, Constance
Erickson	Logan	Schwartz	Wozniak
Fumo	Madigan	Stack	
Gerlach	Mellow	Stout	
Greenleaf	Mowery	Tartaglione	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same with amendments in which concurrence of the House is requested.

HB 846 (Pr. No. 2587) – The Senate proceeded to consideration of the bill, entitled:

An Act providing for certain immunizations in long-term care facilities.

Considered the third time and agreed to,
And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-49

Armstrong	Helfrick	Murphy	Thompson
Bodack	Holl	Musto	Tomlinson
Boscola	Hughes	O'Pake	Wagner
Brightbill	Jubelirer	Orie	Waugh
Conti	Kasunic	Piccola	Wenger
Corman	Kitchen	Punt	White, Donald
Costa	Kukovich	Rhoades	White, Mary Jo
Dent	LaValle	Robbins	Williams, Anthony H.
Earll	Lemmond	Scarnati	Williams, Constance
Erickson	Logan	Schwartz	Wozniak
Fumo	Madigan	Stack	
Gerlach	Mellow	Stout	
Greenleaf	Mowery	Tartaglione	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same with amendments in which concurrence of the House is requested.

BILLS OVER IN ORDER

SB 1011 and **SB 1012** – Without objection, the bills were passed over in their order at the request of Senator BRIGHTBILL.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 1017 (Pr. No. 1545) – The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of December 4, 1996 (P.L.893, No.141), known as the Volunteer Health Services Act, further defining "volunteer license"; further providing for volunteer status, for regulations and for exemptions; and providing for indemnity and defense for active practitioners and for optional liability coverage.

Considered the third time and agreed to,
And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The PRESIDENT. The Chair recognizes the gentleman from Chester, Senator Thompson.

Senator THOMPSON. Mr. President, I rise today to ask my colleagues to support Senate Bill No. 1017, a bill that provides important changes to the Volunteer Health Services Act. Earlier this year we passed legislation allocating a significant portion of Pennsylvania's share of the tobacco settlement money to help clinics across the Commonwealth. The bill before us today provides an additional boost for Pennsylvania's clinics by easing the medical malpractice insurance requirements that now make it difficult for health care practitioners to volunteer their services in this vital health care area.

Under Senate Bill No. 1017, a physician with an active practice would not be required to hold additional medical malpractice coverage to provide volunteer services and would be covered by his or her existing coverage.

Another change in the bill removes a major stumbling block that keeps retired physicians from volunteering. Currently, State law requires that volunteering physicians either carry medical malpractice coverage or give up their professional license if they want to volunteer in a clinic. That, Mr. President, is simply absurd. These professionals face an unreasonable choice that means clinics and families end up losing. Senate Bill No. 1017 eliminates that requirement and allows doctors to keep their communities by sharing their time and their expertise.

I want to note that this bill has the support of the Pennsylvania Medical Society, and I would also like to extend my gratitude to the Pennsylvania Trial Lawyers for their help in crafting this legislation for the bill. It is not often that the doctors and the trial lawyers agree on anything, so I suggest to my colleagues at this time that we do our part for Pennsylvania's clinics and families that rely on them by passing Senate Bill No. 1017.

Thank you.

The PRESIDENT. The Chair recognizes the gentleman from Westmoreland, Senator Kukovich.

Senator KUKOVICH. Mr. President, I want to commend Senator Thompson. He has been working on this bill for some time, and it has been difficult trying to craft an appropriate balance. I think the fact that both the Pennsylvania Medical Society and the Pennsylvania Trial Lawyers have worked this out and have come to an accommodation is a strong statement to the work of he and his staff. I think Senate Bill No. 1017 will go a long way to providing more access to health care to people who deserve it the most, and I ask for unanimous support for this bill.

And the question recurring,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-49

Armstrong	Helfrick	Murphy	Thompson
Bodack	Holl	Musto	Tomlinson
Boscola	Hughes	O'Pake	Wagner
Brightbill	Jubelirer	Orie	Waugh
Conti	Kasunic	Piccola	Wenger
Corman	Kitchen	Punt	White, Donald
Costa	Kukovich	Rhoades	White, Mary Jo
Dent	LaValle	Robbins	Williams, Anthony H.
Earll	Lemmond	Scarnati	Williams, Constance
Erickson	Logan	Schwartz	Wozniak
Fumo	Madigan	Stack	
Gerlach	Mellow	Stout	
Greenleaf	Mowery	Tartaglione	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

BILL OVER IN ORDER

SB 1074 – Without objection, the bill was passed over in its order at the request of Senator BRIGHTBILL.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 1093 (Pr. No. 1524) – The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of April 8, 1868 (P.L.73, No.37), entitled, "An act to authorize the recorder of deeds in the several counties of this Commonwealth to record the discharges of all honorably discharged officers and soldiers," further providing for the recording of final discharges and reports of separation and similar forms.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,

Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-49

Armstrong	Helfrick	Murphy	Thompson
Bodack	Holl	Musto	Tomlinson
Boscola	Hughes	O'Pake	Wagner
Brightbill	Jubelirer	Orie	Waugh
Conti	Kasunic	Piccola	Wenger
Corman	Kitchen	Punt	White, Donald
Costa	Kukovich	Rhoades	White, Mary Jo
Dent	LaValle	Robbins	Williams, Anthony H.
Earll	Lemmond	Scarnati	Williams, Constance
Erickson	Logan	Schwartz	Wozniak
Fumo	Madigan	Stack	
Gerlach	Mellow	Stout	
Greenleaf	Mowery	Tartaglione	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

BILLS OVER IN ORDER

SB 1106 and **SB 1177** – Without objection, the bills were passed over in their order at the request of Senator BRIGHTBILL.

BILL OVER IN ORDER TEMPORARILY

SB 1200 – Without objection, the bill was passed over in its order temporarily at the request of Senator BRIGHTBILL.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 1204 (Pr. No. 1547) – The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of May 9, 1949 (P.L.908, No.250), entitled, as amended, "An act relating to public records of political subdivisions other than cities and counties of the first class; authorizing the recording and copying of documents, plats, papers and instruments of writing by photostatic, photographic, microfilm or other mechanical process, and the admissibility thereof and enlargements thereof in evidence; providing for the storage of duplicates and sale of microfilm copies of official records and for the destruction of other records deemed valueless; and providing for the services of the Pennsylvania Historical and Museum Commission to political subdivisions," further providing for methods for the copying of certain records.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,

Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-49

Armstrong	Helfrick	Murphy	Thompson
Bodack	Holl	Musto	Tomlinson
Boscola	Hughes	O'Pake	Wagner
Brightbill	Jubelirer	Orie	Waugh
Conti	Kasunic	Piccola	Wenger
Corman	Kitchen	Punt	White, Donald
Costa	Kukovich	Rhoades	White, Mary Jo
Dent	LaValle	Robbins	Williams, Anthony H.
Earll	Lemmond	Scarnati	Williams, Constance
Erickson	Logan	Schwartz	Wozniak
Fumo	Madigan	Stack	
Gerlach	Mellow	Stout	
Greenleaf	Mowery	Tartaglione	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

BILL OVER IN ORDER

HB 1408 – Without objection, the bill was passed over in its order at the request of Senator BRIGHTBILL.

SECOND CONSIDERATION CALENDAR

BILLS OVER IN ORDER

SB 460, SB 462, SB 587 and **SB 656** – Without objection, the bills were passed over in their order at the request of Senator BRIGHTBILL.

BILLS REREFERRED

SB 955 (Pr. No. 1584) – The Senate proceeded to consideration of the bill, entitled:

An Act providing for vaccination against meningococcal disease for students at institutions of higher education and for duties of the Department of Health.

Upon motion of Senator BRIGHTBILL, and agreed to by voice vote, the bill was rereferred to the Committee on Appropriations.

SB 1001 (Pr. No. 1575) – The Senate proceeded to consideration of the bill, entitled:

An Act providing for notice to employees of electronic monitoring by employers of network and information technology resources; and imposing civil penalties.

Upon motion of Senator BRIGHTBILL, and agreed to by voice vote, the bill was rereferred to the Committee on Appropriations.

SB 1075 (Pr. No. 1336) – The Senate proceeded to consideration of the bill, entitled:

An Act regulating bail bond enforcement agents; requiring licensure and registration; and providing for penalties.

Upon motion of Senator BRIGHTBILL, and agreed to by voice vote, the bill was rereferred to the Committee on Appropriations.

SB 1115 (Pr. No. 1573) – The Senate proceeded to consideration of the bill, entitled:

An Act establishing within the Department of Environmental Protection an accreditation program for environmental laboratories.

Upon motion of Senator BRIGHTBILL, and agreed to by voice vote, the bill was rereferred to the Committee on Appropriations.

BILL OVER IN ORDER

HB 1333 – Without objection, the bill was passed over in its order at the request of Senator BRIGHTBILL.

BILL ON SECOND CONSIDERATION

HB 1806 (Pr. No. 2935) – The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for qualifications of jurors.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

BILL ON SECOND CONSIDERATION AND REREFERRED

HB 1944 (Pr. No. 2796) – The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes, authorizing municipalities to deny issuing permits, variances, licenses or other approvals to persons who are delinquent in tax payments or are in violation of certain codes, statutes or regulations.

Considered the second time and agreed to,

Ordered, To be printed for third consideration.

Upon motion of Senator BRIGHTBILL, and agreed to by voice vote, the bill just considered was rereferred to the Committee on Appropriations.

UNFINISHED BUSINESS
DISCHARGE PETITION

The PRESIDENT laid before the Senate the following communication, which was read by the Clerk as follows:

December 10, 2001

A PETITION

To place before the Senate the nomination of Edward G. Smith, Esq., as Judge, Court of Common Pleas, Northumberland County.

TO: The President Officer of the Senate:

WE, The undersigned members of the Senate, pursuant to section 8 (b) of Article IV of the Constitution of Pennsylvania, do hereby request that you place the nomination of Edward G. Smith, Esq., as Judge, Court of Common Pleas, Northumberland County, before the entire Senate body for a vote, the nomination not having been voted upon within 15 legislative days:

Raphael J. Musto
Robert J. Mellow
Michael A. O'Pake
Jack Wagner
Richard A. Kasunic
J. Barry Stout
Vincent J. Fumo

The PRESIDENT. The communication will be laid on the table.

CONGRATULATORY RESOLUTIONS

The PRESIDENT laid before the Senate the following resolutions, which were read, considered, and adopted by voice vote:

Congratulations of the Senate were extended to Robert N. Ham by Senator Armstrong.

Congratulations of the Senate were extended to Mr. and Mrs. Oscar Leroy Baney by Senator Corman.

Congratulations of the Senate were extended to Joseph Grana by Senator Costa.

Congratulations of the Senate were extended to Mr. and Mrs. Fred Jadick, Mt. Zion United Methodist Church of Carverton and to the Gate of Heaven Church of Dallas by Senator Lemmond.

Congratulations of the Senate were extended to John Kelly and to Paul Kramer by Senator Murphy.

Congratulations of the Senate were extended to the Reverend Dr. Robert Schuller and to Kailey Spade by Senator Orie.

Congratulations of the Senate were extended to John Moroney by Senator Tartaglione.

Congratulations of the Senate were extended to Bethany Decker by Senator Waugh.

Congratulations of the Senate were extended to Lewis H. Denlinger by Senator Wenger.

Congratulations of the Senate were extended to James O. Hawk and to Jessica Swanderski by Senator D. White.

Congratulations of the Senate were extended to Mr. and Mrs. Sylvester Gjurich by Senator Wozniak.

BILL ON FIRST CONSIDERATION AND REREFERRED

Senator D. WHITE. Mr. President, I move that the Senate do now proceed to consideration of the bill reported from committee for the first time at today's Session.

The motion was agreed to by voice vote.

The bill was as follows:

SB 1240.

And said bill having been considered for the first time.

Upon motion of Senator BRIGHTBILL, and agreed to by voice vote, the bill just considered was rereferred to the Committee on Appropriations.

COMMUNICATIONS FROM THE GOVERNOR

APPROVAL OF SENATE BILLS

The PRESIDENT laid before the Senate communications in writing from His Excellency, the Governor of the Commonwealth, advising that the following Senate Bills had been approved and signed by the Governor:

SB 370 and SB 371.

NOMINATION REFERRED TO COMMITTEE

The PRESIDENT laid before the Senate the following communication in writing from His Excellency, the Governor of the Commonwealth, which was read as follows and referred to the Committee on Rules and Executive Nominations:

MEMBER OF THE STATE BOARD
OF OSTEOPATHIC MEDICINE

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Warren E. Moser, (Public Member), 100 Hadfield Road, Downingtown 19335, Chester County, Forty-fourth Senatorial District, for reappointment as a member of the State Board of Osteopathic Medicine, to serve for a term of four years or until his successor is appointed and qualified, but not longer than six months beyond that period.

Mark S. Schweiker
Governor

RECALL COMMUNICATIONS REFERRED TO COMMITTEE

The PRESIDENT laid before the Senate the following communications in writing from His Excellency, the Governor of the Commonwealth, which were read as follows and referred to the Committee on Rules and Executive Nominations:

MEMBER OF THE PENNSYLVANIA
COUNCIL ON AGING

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 29, 2001 for the appointment of Stephanie Moore, 40 Red Barberry Drive, Etters 17319, York County, Thirty-first Senatorial District, as a member of the Pennsylvania Council on Aging, to serve until October 8, 2002, and until her successor is appointed and qualified, vice Audrey Reichblum, Pittsburgh, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE STATE BOARD
OF BARBER EXAMINERS

December 10, 200[illegible]

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Elisabeth Baker, (Public Member), P.O. Box 59, Mt. View Drive, Lehman 18627, Luzerne County, Twentieth Senatorial District, as a member of the State Board of Barber Examiners, to serve for a term of three years and until her successor is appointed and qualified, but not longer than six months beyond that period, vice Lois K. Herr, Manheim, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE STATE CIVIL
SERVICE COMMISSION

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated July 23, 2001 for the appointment of Donna Kriner, 6320 Darlington Drive, Harrisburg 17112, Dauphin County, Fifteenth Senatorial District, as a member of the State Civil Service Commission, to serve until April 9, 2006 or until her successor is appointed and qualified, but not longer than six months beyond that period, vice Norma J. Gotwalt, Camp Hill, whose term expired.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

CONTROLLER, LUZERNE COUNTY

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 29, 2001 for the appointment of Elisabeth Baker, P.O. Box 59, Mt. View Drive, Lehman 18627, Luzerne County, Twentieth Senatorial District, as Controller, in and for the County of Luzerne, to serve until the first Monday of January 2002, vice Thomas P. Pizano, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE PENNSYLVANIA DRUG,
DEVICE AND COSMETIC BOARD

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 29, 2001 for the appointment of Jennifer L. Hoover, 41 Evergreen Street, Shavertown 18708, Luzerne County, Twentieth Senatorial District, as a member of the Pennsylvania Drug, Device and Cosmetic Board, to serve for a term of four years or until her successor is appointed and qualified, but not longer than six months beyond that period, vice Lawrence R. Soma, V.M.D., Glen Mills, whose term expired.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE PENNSYLVANIA
ENERGY DEVELOPMENT AUTHORITY

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Michelle M. Grove, 220 Umberto Street, New Cumberland 17070, Cumberland County, Thirty-first Senatorial District, as a member of the Pennsylvania Energy Development Authority, to serve for a term of four years and until her successor is appointed and qualified, vice James J. Canova, East McKeesport, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE PENNSYLVANIA
FISH AND BOAT COMMISSION

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 29, 2001 for the appointment of Fritz Bittenbender (District 8), 4400 Colonial Road, Dover 17315, York County, Twenty-eighth Senatorial District, as a member of the Pennsylvania Fish and Boat Commission, to serve for a term of eight years or until his successor is appointed and qualified, but not longer than six months beyond that period, vice Donald N. Lacy, Reading, whose term expired.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE BOARD OF TRUSTEES
OF HARRISBURG STATE HOSPITAL

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Donna Kriner, 6320 Darlington Drive, Harrisburg 17112, Dauphin County, Fifteenth

Senatorial District, as a member of the Board of Trustees of Harrisburg State Hospital, to serve until the third Tuesday of January 2007 and until her successor is appointed and qualified, vice Blake Maria Yohe, York, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE BOARD OF TRUSTEES OF HARRISBURG STATE HOSPITAL

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Stephanie Moore, 40 Red Barberry Drive, Etters 17319, York County, Thirty-first Senatorial District, as a member of the Board of Trustees of Harrisburg State Hospital, to serve until the third Tuesday of January 2007, and until her successor is appointed and qualified, vice Albert E. Myers, Harrisburg, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE PENNSYLVANIA HUMAN RELATIONS COMMISSION

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Fritz Bittenbender, 4400 Colonial Road, Dover 17315, York County, Twenty-eighth Senatorial District, as a member of the Pennsylvania Human Relations Commission, to serve until February 21, 2005 or until his successor is appointed and qualified, vice Robert Johnson-Smith, Elkins Park, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE STATE BOARD OF PODIATRY

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 29, 2001 for the appointment of Mark Navarro, (Public Member), 4184 Kittatinny Drive, Mechanicsburg 17055, Cumberland County, Thirty-first Senatorial District, as a member of the State Board of Podiatry, to serve for a term of four years or until his successor is appointed and qualified, but not longer than six months beyond that period, vice Michael A. Cibik, Philadelphia, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE POLK CENTER BOARD OF TRUSTEES

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Valerie Smith, 7723 Farmdale Avenue, Harrisburg 17112, Dauphin County, Fifteenth Senatorial District, as a member of the Polk Center Board of Trustees, to serve until the third Tuesday of January 2007, and until her successor is appointed and qualified, vice Alvin G. Kessler, Oil City, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Valerie Smith, 7723 Farmdale Avenue, Harrisburg 17112, Dauphin County, Fifteenth Senatorial District, as a member of the Professional Standards and Practices Commission, to serve until the third Tuesday of January 2002, and until her successor is appointed and qualified, vice Susan Genesi, Philipsburg, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

PROTHONOTARY, ALLEGHENY COUNTY

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated July 30, 2001 for the appointment of Fritz Bittenbender, 4400 Colonial Road, Dover 17315, York County, Twenty-eighth Senatorial District, as Prothonotary, in and for the county of Allegheny, to serve until the first Monday of January 2002, vice The Honorable Michael F. Coyne, deceased.

I respectfully request the return to me of the official message o. nomination on the premises.

Mark S. Schweiker
Governor

PROTHONOTARY, CLERK OF COURTS, JEFFERSON COUNTY

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 29, 2001 for the appointment of Donna Kriner, 6320 Darlington Drive, Harrisburg 17112, Dauphin County, Fifteenth Senatorial District, as Prothonotary, Clerk of Courts, in and for the County of Jefferson, to serve until the first Monday of January 2002, vice Kae Ploucha, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

PROTHONOTARY, CLERK OF COURTS, MIFFLIN COUNTY

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 29, 2001 for the appointment of Fritz Bittenbender, 4400 Colonial Road, Dover 17315, York County, Twenty-eighth Senatorial District, as Prothonotary and Clerk of Courts, in and for the County of Mifflin, to serve until the first of Monday of January 2002, vice Sue Ellen Saxton, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE STATE BOARD OF PSYCHOLOGY

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Michelle M. Grove (Public Member) 220 Umberto Street, New Cumberland 17070, Cumberland County, Thirty-first Senatorial District, as a member of the State Board of Psychology, to serve until November 10, 2002 or until her successor is appointed and qualified, but not longer than six months beyond that period, vice Anthony J. Fubio, Altoona, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE PENNSYLVANIA PUBLIC TELEVISION NETWORK COMMISSION

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Valerie Smith, 7723 Farmdale Avenue, Harrisburg 17112, Dauphin County, Fifteenth Senatorial District, as a member of the Pennsylvania Public Television Network Commission, to serve for a term of six years or until her successor is appointed and qualified, but not longer than six months beyond that period, vice Joseph F. Leeson, Jr., Esquire, Bethlehem, whose term expired.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

REGISTER OF WILLS, RECORDER OF DEEDS, CLERK OF ORPHANS' COURT, NORTHUMBERLAND COUNTY

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 6, 2001 for the appointment of Fritz Bittenbender, 4400 Colonial Road, Dover 17315, York County, Twenty-Eighth Senatorial District, as Register of Wills, Recorder of Deeds, Clerk of Orphans' Court, in and for the County of Northumberland, to serve until the first Monday of January 2002, vice Frederick F. Reed, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Wha Lee, (Public Member), 2292 Albern Boulevard, Lancaster 17601, Lancaster County, Thirty-sixth Senatorial District, as a member of the State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, to serve for a term of four years and until her successor is appointed and qualified, but not longer than six months beyond that period, vice Dennis P. McManus, Pittsburgh, whose term expired.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE BOARD OF TRUSTEES OF TORRANCE STATE HOSPITAL

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated September 12, 2001 for the appointment of Jennifer Hoover, 41 Evergreen Street, Shavertown 18708, Luzerne County, Twentieth Senatorial District, as a member of the Board of Trustees of Torrance State Hospital, to serve until the third Tuesday of January 2003, and until her successor is appointed and qualified, vice Velma C. Noonan, Carnegie, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE BOARD OF TRUSTEES OF WERNERSVILLE STATE HOSPITAL

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated July 23, 2001 for the appointment of Stephanie Moore, 40 Red Barberry Drive, Etters 17319, York County, Thirty-first Senatorial District, as a member of the Board of Trustees of Wernersville State Hospital, to serve until the third Tuesday of January 2005, and until her successor is appointed and qualified, vice Pattee J. Miller, Reading, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE BOARD OF TRUSTEES OF WERNERSVILLE STATE HOSPITAL

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 29, 2001 for the appointment of Annette Steele, 2029 Bonita Court, Harrisburg 17110, Dauphin County, Fifteenth Senatorial District, as a member of the Board of Trustees of Wernersville State Hospital, to serve until the third Tuesday of January 2007, and until her successor is appointed and qualified, vice Warren W. Lamm, Sinking Spring, deceased.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE SNYDER COUNTY BOARD OF ASSISTANCE

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated September 25, 2001for the appointment of Jaime Gibson, 10 B West Beale Avenue, Enola 17025, Cumberland County, Thirty-first Senatorial District, as a member of the Snyder County Board of Assistance, to serve until December 31, 2003, and until her successor is appointed and qualified, vice Judy A. Jones, Selinsgrove, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE VENANGO COUNTY BOARD OF ASSISTANCE

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated September 12, 2001 for the appointment of Elizabeth Schehr, 65 Suffolk Road, Harrisburg 17112, Dauphin County, Fifteenth Senatorial District, as a member of the Venango County Board of Assistance, to serve until December 31, 2001, and until her successor is appointed and qualified, vice Creeta Y. Owens, Oil City, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE WARREN COUNTY BOARD OF ASSISTANCE

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated September 12, 2001 for the appointment of Barbara Kauffman, 3182 Cornerstone Drive, Lancaster 17603, Lancaster County, Thirteenth Senatorial District, as a member of the Warren County Board of Assistance, to serve until December 31, 2003, and until her successor is appointed and qualified, vice Wanda C. Little, North Warren, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

SENATE RESOLUTION ADOPTED

Senator C. WILLIAMS, by unanimous consent, offered **Senate Resolution No. 142**, entitled:

A Resolution condemning the Taliban's discrimination and violence against Afghan women; calling upon the President and the Congress the United States to take whatever action is necessary to ensure tha. women and girls gain immediate access to health care and education; and urging negotiations to resume humanitarian assistance.

On the question,
Will the Senate adopt the resolution?

The PRESIDENT. The Chair recognizes the gentlewoman from Montgomery, Senator C. Williams.

Senator C. WILLIAMS. Mr. President, I have some remarks to submit for the record.

The PRESIDENT. They will be so noted.

(The following prepared statement was made a part of the record at the request of the gentlewoman from Montgomery, Senator C. WILLIAMS:)

Mr. President, the following words are based on the experiences of a woman living under the Taliban in Afghanistan. The author, a woman named Neesha, describes her as part of the silenced, one who has given up on life.

"I remember when I still believed in hope. I remember when I thought they would come to save us from a life of chains.

"In my country, women have no rights. Girls are not allowed an education, and my little girl can't even spell her own name.

"We are murdered if we leave our homes unescorted. We are covered from head to toe in suffocating garbs and we are invisible to the world.

"We cannot attract attention or we will be slaughtered. We cannot participate in social events or sports. My children cannot fly kites – real or imaginary.

"My teenage boy believes that women are the lowest form of life on earth. That's what they taught him...that's all he's ever seen. He will beat his wife and treat her like a slave.

"I wrote this to tell the world who doesn't care about me...that I exist even if they look the other way."

Mr. President, today I rise and ask my Senate colleagues not to look the other way.

There is no way I can begin to catalogue the atrocities committed against women under the Taliban Regime. The Human Rights Organization, Physicians for Human Rights, conducted a study of the effects of the Taliban's policies on women's health and human rights. The study found that eighty-one percent of women reported a decline in mental health. Forty-two percent met the criteria for post-traumatic stress disorder. Ninety-seven percent met the criteria for major depression, and eighty-six percent showed significant symptoms of anxiety.

The resolution I offer today condemns the Taliban's discrimination against women, and asks President Bush and Congress to publicly disapprove of these atrocities. The resolution further asks the U.S. government to take whatever steps necessary to end the violence against Afghani women and to urge the full restoration of their rights.

The resolution also urges the U.S. government and the United Nations' humanitarian organizations to provide assistance to aid the new government of Afghanistan in the restoration of women's rights.

The oppression of women under Taliban rule has gone on for many years in Afghanistan, and many courageous people around the world have dedicated themselves to fighting that oppression. I introduced a resolution similar to this one in the House of Representatives in March. Unfortunately, it has taken the tragedy of September 11 to focus attention on this crisis.

As First Lady Laura Bush noted in her radio address last month, "The severe repression and brutality against women in Afghanistan is not a matter of legitimate religious practice. Muslims around the world have condemned the brutal degradation of women and children by the Taliban Regime." Mrs. Bush asked the nation to fight to secure dignity and opportunity for all the women and children of Afghanistan, and I ask the same of the Pennsylvania Senate today.

Mr. President, the anguished words of the Afghani woman with which I opened my remarks were taken from a poem entitled, "The Threshold of Silence." I ask my Senate colleagues to be the voice of Afghani women who are only now beginning to be heard.

Thank you, Mr. President.

And the question recurring,
Will the Senate adopt the resolution?

A voice vote having been taken, the question was determined in the affirmative.

EXECUTIVE NOMINATIONS

EXECUTIVE SESSION

Motion was made by Senator ROBBINS,

That the Senate do now resolve itself into Executive Session for the purpose of considering certain nominations made by the Governor.

Which was agreed to by voice vote.

NOMINATIONS TAKEN FROM THE TABLE

Senator ROBBINS. Mr. President, I call from the table certain nominations and ask for their consideration.

The Clerk read the nominations as follows:

MEMBER OF THE STATE BOARD OF BARBER EXAMINERS

November 8, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Gregory Stella, 13 Crescent Road, Plains 18705, Luzerne County, Fourteenth Senatorial District, for appointment as a member of the State Board of Barber Examiners, to serve for a term of three years and until his successor is appointed and qualified, but not longer than six months beyond that period, vice Robert V. Vavro, Allegheny, whose term expired.

Mark S. Schweiker
Governor

MEMBER OF THE PENNSYLVANIA CANCER CONTROL, PREVENTION AND RESEARCH ADVISORY BOARD

November 8, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Julia A. Bucher, RR # 3 Box 1576, Milton, 17847, Northumberland County, Twenty-seventh Senatorial District, for reappointment as a member of the Pennsylvania Cancer Control, Prevention and Research Advisory Board, to serve for a term of four years and until her successor is appointed and qualified.

Mark S. Schweiker
Governor

MEMBER OF THE PENNSYLVANIA CANCER CONTROL, PREVENTION AND RESEARCH ADVISORY BOARD

November 8, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Diane M. Zilinskas, 302 Giffin Avenue, Pittsburgh 15210, Allegheny County, Forty-third Senatorial District, for reappointment as a member of the Pennsylvania Cancer Control, Prevention and Research Advisory Board, to serve for a term of four years and until her successor is appointed and qualified.

Mark S. Schweiker
Governor

MEMBER OF THE STATE BOARD OF CHIROPRACTIC

October 24, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Michael A. Phillips, D.C., 275 Stoney Lane, Northumberland 17857, Northumberland County, Twenty-seventh Senatorial District, for appointment as a member of the State Board of Chiropractic, to serve for a term of four years or until his successor is appointed and qualified, but not longer than six months beyond that period, vice Thomas R. Butler, D.C., Bellefonte, whose term expired.

Mark S. Schweiker
Governor

MEMBER OF THE STATE BOARD OF COSMETOLOGY

November 2, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Frank R. Gallo, 735 Wyndrise Drive, Blue Bell 19422, Montgomery County, Twenty-fourth Senatorial District, for appointment as a member of the State Board of Cosmetology, to serve for a term of three years or until his successor is appointed and qualified, but not longer than six months beyond that period, vice Caroline A. Novak, Coatesville, whose term expired.

Mark S. Schweiker
Governor

MEMBER OF THE STATE BOARD OF DENTISTRY

October 24, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Susan E. Calderbank, D.M.D., 4 Eastwood Drive, Greenville 16125, Mercer County, Fiftieth Senatorial District, for reappointment as a member of the State Board of Dentistry, to serve for a term of six years or until her successor is appointed and qualified, but not longer than six months beyond that period..

Mark S. Schweiker
Governor

BRIGADIER GENERAL, PENNSYLVANIA NATIONAL GUARD

October 22, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Colonel Stanley J. Jaworski, 723 East Maple Street, Annville 17003, Lebanon County, Forty-eighth Senatorial District, for appointment as Brigadier General, with assignment as Chief of Staff, Headquarters, Pennsylvania Air National Guard, to serve until terminated.

Mark S. Schweiker
Governor

BRIGADIER GENERAL, PENNSYLVANIA NATIONAL GUARD

October 22, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Colonel Ronald L. Shultz, P.O. Box 37, Cashtown 17310, Adams County, Thirty-third Senatorial District, for appointment as Brigadier General, with assignment as Chief of Staff, Headquarters, Pennsylvania Air National Guard, to serve until terminated.

Mark S. Schweiker
Governor

MEMBER OF THE STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

November 2, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, A. Sidney Brookes, Jr., (Public Member) 2 Concord Way, Chadds Ford 19317, Chester County, Ninth Senatorial District, for appointment as a member of the State Board of Examiners of Nursing Home Administrators, to serve for a term of four years or until his successor is appointed and qualified, but not longer than six months beyond that period, vice Sara A. Sargent, Johnstown, whose term expired.

Mark S. Schweiker
Governor

MEMBER OF THE STATE BOARD OF NURSING

October 30, 200'

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Vincent A. Galko, (Public Member) 423 Walnut Street, Apt. 312, Harrisburg 17101, Dauphin County, Fifteenth Senatorial District, for appointment as a member of the State Board of Nursing, to serve for a term of six years or until his successor is appointed and qualified, but not longer than six months beyond that period, vice Ellen J. B. Toker, Allegheny, whose term expired.

Mark S. Schweiker
Governor

MEMBER OF THE STATE BOARD OF OPTOMETRY

November 2, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Marc Berson, O.D., M.B.A., 31 South 9th Street, Allentown 18102, Lehigh County, Sixteenth Senatorial District, for appointment as a member of the State Board of Optometry, to serve for a term of four years and until his successor is appointed and qualified, but not longer than six months beyond that period, vice Benson Y. Olenick., O.D., Easton, whose term expired.

Mark S. Schweiker
Governor

MEMBER OF THE STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

July 19, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Richard Hudic (Public Member), 4078 Rawleigh Street, Harrisburg 17109, Dauphin County, Fifteenth Senatorial District, for appointment as a member of the State Registration Board for Professional Engineers, Land Surveyors and Geologist*[sic]*, to serve for a term of six years or until his successor is appointed and qualified, but not longer than six months beyond that period, vice Margo P. Dinniman, Exton, whose term expired.

THOMAS J. RIDGE
Governor

MEMBER OF THE STATE REAL ESTATE COMMISSION

November 14, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Joseph J. McGettigan, 237 Long Lane, Second Floor, Upper Darby 19082, Delaware County, Twenty-sixth Senatorial District, for reappointment as a member of the State Real Estate Commission, to serve for a term of five years or until his successor is appointed and qualified, but not longer than six months beyond that period.

Mark S. Schweiker
Governor

MEMBER OF THE STATE TRANSPORTATION COMMISSION

September 25, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Gene G. Smith, 822 Kocher Drive, Grove City 16127, Mercer County, Fiftieth Senatorial District, for reappointment as a member of the State Transportation Commission, to serve for a term of six years and until his successor is appointed and qualified, but not longer than six months beyond that period.

THOMAS J. RIDGE
Governor

MEMBER OF THE STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

October 5, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Richard Cessar (Public Member), 4251 Chamberton Court, Allison Park 15101, Allegheny County, Fortieth Senatorial District, for reappointment as a member of the State Board of Vehicle Manufacturers, Dealers and Salespersons, to serve for a term of four years and until his successor is appointed and qualified, but not longer than six months beyond that period.

THOMAS J. RIDGE
Governor

MEMBER OF THE FAYETTE COUNTY BOARD OF ASSISTANCE

October 29, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Reverend Bernard W. Carl, (Republican), 31 Heritage Hills Road, Uniontown 15401, Fayette County, Thirty-second Senatorial District, for appointment as a member of the Fayette County Board of Assistance, to serve until December 31, 2001, and until his successor is appointed and qualified, vice Maureen Cook Coldren, Dunbar, resigned.

Mark S. Schweiker
Governor

On the question,
Will the Senate advise and consent to the nominations?

The yeas and nays were required by Senator ROBBINS and were as follows, viz:

YEA-49

Armstrong	Helfrick	Murphy	Thompson
Bodack	Hoil	Musto	Tomlinson
Boscola	Hughes	O'Pake	Wagner
Brightbill	Jubelirer	Orie	Waugh
Conti	Kasunic	Piccola	Wenger
Corman	Kitchen	Punt	White, Donald

Costa	Kukovich	Rhoades	White, Mary Jo
Dent	LaValle	Robbins	Williams, Anthony H.
Earll	Lemmond	Scarnati	Williams, Constance
Erickson	Logan	Schwartz	Wozniak
Fumo	Madigan	Stack	
Gerlach	Mellow	Stout	
Greenleaf	Mowery	Tartaglione	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Governor be informed accordingly.

EXECUTIVE SESSION RISES

Senator ROBBINS. Mr. President, I move that the Executive Session do now rise.

The motion was agreed to by voice vote.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, at this time I ask for a recess of the Senate. Dinner is being served at 7:30, and I believe the Democrats wish to caucus at this time.

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Wagner.

Senator WAGNER. Mr. President, I ask for a Democratic caucus immediately following the recess.

The PRESIDENT. For the information of the Members, dinner was ordered for the Members tonight, recognizing it was going to be a late Session. My understanding is that dinner will be served for the Members in the Senate dining room, staff on E floor, and that will be here around 7:30.

Senator Wagner has asked the Members of the Democratic Caucus to report to the Minority Caucus Room to the rear of the Senate Chamber.

For those various purposes, without objection, the Senate will stand in recess.

AFTER RECESS

The PRESIDENT. The time of recess having expired, the Senate will come to order.

SPECIAL ORDER OF BUSINESS ANNOUNCEMENTS BY THE SECRETARY

The SECRETARY. Consent has been given for the Committee on Rules and Executive Nominations to meet during today's Session to consider House Bill No. 1405, and certain nominations.

SPECIAL ORDER OF BUSINESS SUPPLEMENTAL CALENDAR No. 2

BILL ON SECOND CONSIDERATION AND REREFERRED

HB 3 (Pr. No. 1032) – The Senate proceeded to consideration of the bill, entitled:

An Act establishing a unified workforce investment system; restructuring certain administrative functions, procedures and entities; transferring workforce development functions of Commonwealth agencies; establishing the Pennsylvania Workforce Investment Board; and authorizing local workforce investment boards.

Considered the second time and agreed to,

Ordered, To be printed for third consideration.

Upon motion of Senator BRIGHTBILL, and agreed to by voice vote, the bill just considered was rereferred to the Committee on Appropriations.

SPECIAL ORDER OF BUSINESS SUPPLEMENTAL CALENDAR No. 1

BILLS ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 212 (Pr. No. 3043) – The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 34 (Game) of the Pennsylvania Consolidated Statutes, providing for the possession of shed antlers; and further providing for the time periods of permits, for permit fees, for records, for reports and for disabled person permits.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,

Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-49

Armstrong	Helfrick	Murphy	Thompson
Bodack	Holl	Musto	Tomlinson
Boscola	Hughes	O'Pake	Wagner
Brightbill	Jubelirer	Orie	Waugh
Conti	Kasunic	Piccola	Wenger
Corman	Kitchen	Punt	White, Donald
Costa	Kukovich	Rhoades	White, Mary Jo
Dent	LaValle	Robbins	Williams, Anthony H.
Earll	Lemmond	Scarnati	Williams, Constance
Erickson	Logan	Schwartz	Wozniak
Fumo	Madigan	Stack	
Gerlach	Mellow	Stout	
Greenleaf	Mowery	Tartaglione	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same with amendments in which concurrence of the House is requested.

HB 437 (Pr. No. 3044) – The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, adding provisions relating to the labeling, sale and distribution of fertilizer and of soil and plant amendments; providing for the powers and duties of the Department of Agriculture; establishing the Agronomic Regulatory Account; prescribing penalties; and making a repeal.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,

Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-49

Armstrong	Helfrick	Murphy	Thompson
Bodack	Holl	Musto	Tomlinson
Boscola	Hughes	O'Pake	Wagner
Brightbill	Jubelirer	Orie	Waugh
Conti	Kasunic	Piccola	Wenger
Corman	Kitchen	Punt	White, Donald
Costa	Kukovich	Rhoades	White, Mary Jo
Dent	LaValle	Robbins	Williams, Anthony H.
Earll	Lemmond	Scarnati	Williams, Constance
Erickson	Logan	Schwartz	Wozniak
Fumo	Madigan	Stack	
Gerlach	Mellow	Stout	
Greenleaf	Mowery	Tartaglione	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same with amendments in which concurrence of the House is requested.

THIRD CONSIDERATION CALENDAR RESUMED

SB 1200 CALLED UP

SB 1200 (Pr. No. 1531) – Without objection, the bill, which previously went over in its order temporarily, was called up, from page 4 of the Third Consideration Calendar, by Senator BRIGHTBILL.

BILL AMENDED

SB 1200 (Pr. No. 1531) – The Senate proceeded to consideration of the bill, entitled:

An Act requiring publication of notice of the establishment of Congressional districts following the Federal decennial census.

On the question,

Will the Senate agree to the bill on third consideration?

Senator BRIGHTBILL offered the following amendment No. A4818:

Amend Title, page 1, line 1, by striking out "Requiring" and inserting: To apportion the Commonwealth of Pennsylvania into congressional districts in conformity with constitutional requirements; providing for the nomination and election of Congressmen; and requiring

Amend Title, page 1, line 2, by striking out "Congressional" and inserting: congressional

Amend Bill, page 1, by inserting between lines 5 and 6:

Section 1. Congressional districts.

For the purpose of electing representatives of the people of Pennsylvania to serve in the House of Representatives in the Congress of the United States, this Commonwealth shall be divided into 19 districts which shall have one Congressman each, as follows:

(1) The First District is composed of part of Delaware County consisting of the City of Chester and the Townships of Chester, Darby Wards 1 and 2, Ridley Ward 1 (Division 2) and Tinicum Wards 1, 2, 3 and 4 and the Boroughs of Colwyn, Darby, Eddystone and Yeadon; and part of Philadelphia County consisting of the City of Philadelphia Wards 1 (Divisions 15, 17, 18, 19 and 21), 2 (Divisions 1, 2, 12, 13, 14, 15, 16, 25, 26 and 27), 3, 4, 5 (Divisions 1, 2, 3, 4, 10, 15, 16, 17, 18, 19, 20, 21 and 23), 7, 10 (Divisions 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 17, 20, 21, 22 and 27), 11, 13, 14, 16, 17, 18, 19, 20, 23, 25 (Divisions 13, 14, 15, 16 and 20), 26 (Divisions 1, 2, 3, 20, 23 and 24), 31 (Divisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17), 33, 34, 35 (Divisions 9 (all blocks except 8001 of tract 030500), 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31), 37, 39 (Divisions 2, 3, 4, 6, 7, 8, 12, 13, 14, 15, 16, 17, 20, 21, 24, 29, 33, 36, 39, 41 and 44), 40 (Divisions 1, 28, 30, 31, 35, 36, 37, 38, 40, 41, 42, 44, 45, 46, 48, 49 and 50), 42, 43, 45 (Division 18), 47 (Divisions 1, 2, 3, 4 and 5), 49, 52 (Division 20) (only blocks 5000 and 5005 of tract 011800), 53 (Divisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13 and 23), 54 (Divisions 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21 and 22), 61 and 62 (Divisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 20, 21, 22, 23, 24, 25 and 26).

(2) The Second District is composed of part of Montgomery County consisting of the Township of Cheltenham; and part of Philadelphia County consisting of the City of Philadelphia Wards 1 (Divisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16 and 20), 2 (Divisions 3, 4, 5, 6, 7, 8, 9, 10, 11, 17, 18, 19, 20, 21, 22, 23 and 24), 5 (Divisions 5, 6, 7, 8, 9, 11, 12, 13, 14 and 22), 6, 8, 9, 10 (Divisions 6, 13, 16, 18, 19, 23, 24, 25, 26, 28 and 29), 12, 15, 21, 22, 24, 26 (Divisions 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21 and 22), 27, 28, 29, 30, 32, 36, 38, 39 (Divisions 1, 5, 9, 10, 11, 18, 19, 22, 23, 25, 26, 27, 28, 30, 31, 32, 34, 35, 37, 38, 40, 42, 43, 45 and 46), 40 (Divisions 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 32, 33, 34, 39, 43, 47 and 51), 44, 46, 47 (Divisions 6, 7, 8, 9, 10, 11, 12, 13 and 14), 48, 50, 51, 52 (Divisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 20 (all blocks except 5000 and 5005 of tract 011800), 21, 22, 23, 24, 25, 26, 27 and 28), 59 and 60.

(3) The Third District is composed of part of Berks County consisting of the Townships of Amity, Brecknock, Caernarvon, Colebrookdale, Cumru Districts 2, 3 and 5, District, Douglass, Earl, Exeter Districts 2, 3 (all blocks except 2001, 2002, 2005, 2006, 2008 and 2009 of tract of 012002) and 6, Heidelberg, Hereford, Longswamp, Lower Heidelberg, Maxatawny, North Heidelberg, Oley, Pike, Robeson, Rockland, Ruscombmanor, South Heidelberg, Spring, Union and Washington and the Boroughs of Adamstown, Bally, Bechtelsville, Birdsboro, Boyertown, Kutztown, Lyons, Mohnton, New Morgan, Robesonia, Shillington, Sinking Spring, Topton, Wernersville, West Lawn, Womelsdorf, Wyomissing and Wyomissing Hills; part of Chester County consisting of the City of Coatesville and the Townships of Caln, Charlestown, East Bradford District North, East Brandywine, East Caln, East Coventry, East Fallowfield, East Goshen Precincts 1, 5, 6 and 8, East Nantmeal, East Pikeland, East Vincent, East Whiteland, Highland, Honey Brook, Londonderry, Lower Oxford District East, Newlin, North Coventry, Penn, Sadsbury, Schuylkill, South Coventry, Tredyffrin Districts Middle (Divisions 1 and 5) and West, Upper Oxford,

Upper Uwchlan, Uwchlan, Valley, Wallace, Warwick, West Bradford, West Brandywine, West Caln, West Fallowfield, West Goshen District North (Division 3 (only blocks 1010, 1013, 1014, 1026 of tract 302704)), West Marlborough, West Nantmeal, West Pikeland, West Sadsbury, West Vincent, West Whiteland and Willistown District North (Divisions 1, 4, 5 and 6) and the Boroughs of Atglen, Downingtown, Elverson, Honey Brook, Malvern, Modena, Parkesburg, Phoenixville, South Coatesville and Spring City; part of Lebanon County consisting of the Townships of Jackson and Millcreek and the Boroughs of Myerstown and Richland; and part of Montgomery County consisting of the Townships of Douglass, East Norriton, Limerick Wards 2 (all blocks except 9037, 9038, 9039, 9040 and 9041 of tract 208601), 3 and 5, Lower Merion, New Hanover Ward 1, Perkiomen, Plymouth Districts 2 (Divisions 1 and 2), 3 and 4, Skippack, Upper Hanover District 2, Upper Pottsgrove, West Pottsgrove, Whitemarsh Districts East (Division 2), Middle (Divisions 1, 2, 3 and 4) and West, Whitpain Districts 2, 3, 4, 5, 6, 7, 8, 9 and 10 and Worcester and the Boroughs of Collegeville, Narberth, Norristown Districts 1 (Divisions 2 and 3), 2 (Divisions 2 and 3), 3 and 4, Pottstown District 3 (Division 2) (only blocks 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2012, 2013, 2014, 2015, 2016, 2017, 3000, 3001 and 3002 of tract 209000) and Schwenksville.

(4) The Fourth District is composed of part of Allegheny County consisting of the Townships of Aleppo, East Deer Ward 1 (only blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1020, 1021 of tract 404000), Fawn, Frazer, Hampton, Harmar, Harrison, Indiana, Kilbuck, Leet, Marshall, McCandless, O'Hara Wards 1 (Division 1), 2, 3, 4 and 5, Ohio, Pine, Richland, Ross, Shaler, Springdale and West Deer and the Boroughs of Aspinwall, Bell Acres, Ben Avon, Ben Avon Heights, Brackenridge, Bradford Woods, Cheswick, Edgeworth, Etna Ward 3, Fox Chapel, Franklin Park, Haysville, Leetsdale, Monroeville Ward 3 (Divisions 1, 2 and 3), Oakmont, Osborne, Plum, Sewickley, Sewickley Heights, Sewickley Hills, Springdale and West View; all of Beaver County; part of Butler County consisting of the Townships of Adams, Buffalo, Clinton, Cranberry, Jackson, Lancaster and Middlesex and the Boroughs of Harmony, Mars, Seven Fields, Valencia and Zelienople; all of Lawrence County; part of Mercer County consisting of the Cities of Farrell and Hermitage District Sw (Division 3) and the Township of Shenango and the Boroughs of West Middlesex and Wheatland; and part of Westmoreland County consisting of the Boroughs of Delmont, Export and Murrysville.

(5) The Fifth District is composed of part of Armstrong County consisting of the Township of Hovey (only block 1000 of tract of 980300); all of Cameron County; all of Centre County; part of Clarion County consisting of the Townships of Ashland, Beaver, Brady, Clarion, Elk, Farmington, Highland, Knox, Licking, Madison, Millcreek, Paint, Perry, Richland, Salem, Toby and Washington and the Boroughs of Callensburg, Clarion, East Brady, Foxburg, Knox, Rimersburg, Shippenville, St. Petersburg and Strattanville; part of Clearfield County consisting of the City of Dubois and the Townships of Bell, Bigler (all blocks except 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2120, 2121, 2122 and 2123 of tract 331600), Bloom, Boggs, Bradford, Brady, Cooper, Covington, Decatur, Ferguson, Girard, Goshen, Graham, Greenwood, Huston, Jordan, Karthaus, Knox, Lawrence, Morris, Penn, Pike, Pine, Sandy, Union and Woodward and the Boroughs of Brisbin, Chester Hill, Clearfield, Curwensville, Grampian, Houtzdale, Lumber City, Mahaffey, Newburg, Osceola Mills, Troutville and Wallaceton; all of Clinton County; part of Crawford County consisting of the City of Titusville and the Townships of Oil Creek and Rome and the Borough of Hydetown; all of Elk County; all of Forest County; all of Jefferson County; part of Juniata County consisting of the Townships of Delaware, Fayette, Fermanagh, Greenwood, Monroe, Susquehanna and Walker and the Boroughs of Mifflintown and Thompsontown; part of Lycoming County consisting of the Townships of Armstrong, Bastress, Brady, Clinton, Limestone, Nippenose, Piatt, Porter, Susquehanna and Washington and the Boroughs of Duboistown, Jersey Shore, Montgomery and South Williamsport; all of McKean County; part of Mifflin County consisting of the Townships of Armagh, Brown, Decatur and Derry and the Boroughs of Burnham and Lewistown; part of Perry County consisting of the Townships of Greenwood, Liverpool, Oliver and Tuscarora and the Boroughs of Liverpool, Millerstown and Newport; all of Potter County; all of Tioga County; part of Venango County consisting of the Cities of Franklin and Oil City and the Townships of Allegheny, Canal, Cherrytree, Cornplanter, Cranberry, Frenchcreek, Jackson, Mineral, Oakland, Oil Creek, Pinegrove, Plum, President, Sandycreek and Victory and the Boroughs of Cooperstown, Pleasantville, Polk, Rouseville, Sugarcreek and Utica; and part of Warren County consisting of the City of Warren and the Townships of Cherry Grove, Conewango, Deerfield, Eldred, Limestone, Mead, Pleasant, Sheffield, Southwest, Triumph and Watson and the Boroughs of Clarendon and Tidioute.

(6) The Sixth District is composed of part of Berks County consisting of the City of Reading and the Townships of Albany, Alsace, Bern, Bethel, Centre, Cumru Districts 1, 4 and 6, Exeter Districts 1, 3 (only blocks 2001, 2002, 2005, 2006, 2008 and 2009 of tract 012002), 4, 5 and 7, Greenwich, Jefferson, Lower Alsace, Maidencreek, Marion, Muhlenberg, Ontelaunee, Penn, Perry, Richmond, Tilden, Tulpehocken, Upper Bern, Upper Tulpehocken and Windsor and the Boroughs of Bernville, Centerport, Fleetwood, Hamburg, Kenhorst, Laureldale, Leesport, Lenhartsville, Mount Penn, Shoemakersville, St. Lawrence, Strausstown and West Reading; all of Carbon County; part of Lackawanna County consisting of the City of Scranton Wards 4, 5, 6, 9 (Division 4), 10, 11, 12, 14, 15, 17, 18, 19, 20, 21 (Divisions 1, 2, 4 and 5), 22, 23 (Division 4) and 24 and the Boroughs of Dunmore, Moosic and Taylor; part of Luzerne County consisting of the Cities of Hazleton, Nanticoke, Pittston and Wilkes-Barre and the Townships of Butler, Dorrance, Hanover Wards 2, 3, 5 (Division 3) and 6, Hazle Districts 1 - Jeddo, 2 - Milnesville, 5 - Jeanesville, 6 - Pardeesville, 7 - Stockton, 8 - Lattimer, 9 - Cranberry (only blocks 1017, 1018, 1023 and 1024 of tract 217001), 10 and 11 - Harleigh, Jenkins, Newport, Pittston, Plains, Slocum and Wilkes-Barre and the Boroughs of Ashley, Avoca, Dupont, Duryea, Hughestown, Jeddo, Laflin, Laurel Run, Sugar Notch, Warrior Run, West Hazleton Wards 1, 2 (Division 2) and 3 and Yatesville; and all of Schuylkill County.

(7) The Seventh District is composed of part of Chester County consisting of the Townships of East Goshen Precincts 2, 3, 4, 7 and 9, Easttown, Thornbury, Tredyffrin Districts East and Middle (Divisions 2, 3, 4, 6 and 7), Westtown and Willistown Districts North (Divisions 2 and 3) and South; part of Delaware County consisting of the Townships of Aston, Bethel, Chadds Ford, Concord, Darby Wards 3, 4 and 5, Edgmont, Haverford, Lower Chichester, Marple, Middletown, Nether Providence, Newtown, Radnor, Ridley Wards 1 (Divisions 1 and 3), 2, 3, 4, 5, 6, 7, 8 and 9, Springfield, Thornbury, Tinicum Ward 5, Upper Chichester, Upper Darby and Upper Providence and the Boroughs of Aldan, Brookhaven, Chester Heights, Clifton Heights, Collingdale, East Lansdowne, Folcroft, Glenolden, Lansdowne, Marcus Hook, Media, Millbourne, Morton, Norwood, Parkside, Prospect Park, Ridley Park, Rose Valley, Rutledge, Sharon Hill, Swarthmore, Trainer and Upland; and part of Montgomery County consisting of the Townships of Limerick Wards 1, 2 (only blocks 9036, 9037, 9038, 9039, 9040 and 9041 of tract 208601) and 4, Lower Providence, Plymouth Districts 1 and 2 (Division 3), Upper Merion, Upper Providence and West Norriton and the Boroughs of Bridgeport, Conshohocken, Norristown Districts 1 (Division 1) and 2 (Division 1), Royersford, Trappe and West Conshohocken.

(8) The Eighth District is composed of all of Bucks County; part of Montgomery County consisting of the Townships of Hatfield Districts 220 1, 2, 3 and 4 and Towamencin District 1 (Division 3 (all blocks except 9001, 9002, 9003, 9004 and 9006 of tract 206904)) and the Borough of Hatfield; and part of Philadelphia County consisting of the City of Philadelphia Ward. 58 (Divisions 2, 4, 6, 7, 12, 21, 22, 29, 39 and 41) and 66 (Divisions 6, 8, 9, 11, 15, 17, 20, 24, 29, 30, 33, 34, 35, 36, 39, 41, 42, 43 and 45).

(9) The Ninth District is composed of part of Armstrong County consisting of the Townships of Bethel, Burrell, Cadogan,

Gilpin Districts 1 and 3, Kiskiminetas, Manor, Parks, Plumcreek and South Bend and the Boroughs of Apollo, Elderton, Ford City, Ford Cliff, Kittanning, Leechburg, Manorville and North Apollo; all of Bedford County; all of Blair County; part of Cambria County consisting of the Township of Reade District North; part of Clearfield County consisting of the Townships of Beccaria, Bigler (only blocks 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2120, 2121, 2122 and 2123 of tract 331600), Burnside, Chest and Gulich and the Boroughs of Burnside, Coalport, Glen Hope, Irvona, New Washington, Ramey and Westover; part of Cumberland County consisting of the Townships of East Pennsboro and Hampden Precincts 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 and the Boroughs of Shiremanstown (all blocks except 3010, 3011, 3012, 3014, 3015, 3016, 3017 and 3018 of tract 011200) and Wormleysburg Precinct 2; part of Fayette County consisting of the City of Connellsville Wards 4 and 5 and the Townships of Connellsville, Dunbar District 1, Georges Districts 1 and 2, Henry Clay, North Union District 3, South Union District 3, Springfield, Springhill District 1, Stewart and Wharton and the Boroughs of Fairchance, Markleysburg, Ohiopyle, Smithfield and South Connellsville; all of Franklin County; all of Fulton County; all of Huntingdon County; part of Indiana County consisting of the Townships of Armstrong, Banks, Brush Valley, Buffington, Canoe, Cherryhill, Conemaugh, East Mahoning, Grant, Green, Montgomery, North Mahoning, Pine, Rayne, South Mahoning, Washington, West Mahoning, White District 1 and Young and the Boroughs of Cherry Tree, Clymer, Creekside, Ernest, Glen Campbell, Marion Center, Plumville, Saltsburg, Shelocta and Smicksburg; part of Juniata County consisting of the Townships of Beale, Lack, Milford, Spruce Hill, Turbett and Tuscarora and the Boroughs of Mifflin and Port Royal; part of Mifflin County consisting of the Townships of Bratton, Granville, Menno, Oliver, Union and Wayne and the Boroughs of Juniata Terrace, Kistler, McVeytown and Newton Hamilton; part of Perry County consisting of the Townships of Carroll, Centre, Howe (all blocks except 3000, 3001, 3002, 3011, 3012, 3013, 3014, 3015, 3016, 3017, 3018, 3019, 3020, 3021, 3049 and 3050 (of tract 030200), Jackson, Junista, Miller, Northeast Madison, Penn, Rye, Saville, Southwest Madison, Spring, Toboyne, Tyrone and Wheatfield and the Boroughs of Blain, Bloomfield, Duncannon, Landisburg and Marysville; and part of Somerset County consisting of the Townships of Addison, Allegheny, Black, Brothersvalley, Conemaugh Districts 1, 3 and 5, Elk Lick, Fairhope, Greenville, Larimer, Lower Turkeyfoot, Milford, Northampton, Ogle, Paint, Quemahoning, Shade, Somerset, Southampton, Stonycreek, Summit and Upper Turkeyfoot and the Boroughs of Addison, Benson, Berlin, Callimont, Casselman, Central City, Confluence, Garrett, Hooversville, Indian Lake, Meyersdale, New Baltimore, New Centerville, Rockwood, Salisbury, Shanksville, Somerset, Stoystown, Ursina and Wellersburg.

(10) The Tenth District is composed of all of Bradford County; part of Lackawanna County consisting of the Cities of Carbondale and Scranton Wards 1, 2, 3, 7, 9 (Divisions 1, 2 and 3), 13, 16, 21 (Division 3) and 23 (Divisions 1, 2, 3 and 5) and the Townships of Abington, Benton, Carbondale, Clifton, Covington, Elmhurst, Fell, Glenburn, Greenfield, Jefferson, La Plume, Madison, Newton, North Abington, Ransom, Roaring Brook, Scott, South Abington, Spring Brook, Thornhurst and West Abington and the Boroughs of Archbald, Blakely, Clarks Green, Clarks Summit, Dalton, Dickson City, Jermyn, Jessup, Mayfield, Moscow, Old Forge, Olyphant, Throop and Vandling; part of Luzerne County consisting of the Townships of Bear Creek, Buck, Dallas, Dennison, Exeter, Fairview, Foster, Franklin, Kingston, Lehman, Rice and Wright and the Boroughs of Bear Creek Village, Dallas, Exeter, Forty Fort, Freeland, Nuangola, Penn Lake Park, Swoyersville Wards 1 (Division 1) and 2 (Division 2), West Pittston, West Wyoming, White Haven and Wyoming; part of Lycoming County consisting of the City of Williamsport and the Townships of Anthony, Brown, Cascade, Cogan House, Cummings, Eldred, Fairfield, Franklin, Gamble, Hepburn, Jackson, Jordan, Lewis, Loyalsock, Lycoming, McHenry, McIntyre, McNett, Mifflin, Mill Creek, Moreland, Muncy, Muncy Creek, Old Lycoming, Penn, Pine, Plunketts Creek, Shrewsbury, Upper Fairfield, Watson, Wolf and Woodward and the Boroughs of Hughesville, Montoursville, Muncy, Picture Rocks and Salladasburg; part of Monroe County consisting of the Townships of Barrett, Chestnuthill Districts 1 and 2 (only blocks 1121, 2020, 2022, 2027, 2028, 2029 and 2999 of tract 301201), Coolbaugh, Eldred, Middle Smithfield, Paradise, Pocono, Polk, Price, Smithfield, Stroud, Tobyhanna and Tunkhannock and the Boroughs of Delaware Water Gap, East Stroudsburg, Mount Pocono and Stroudsburg; all of Pike County; all of Sullivan County; all of Susquehanna County; all of Wayne County; and all of Wyoming County.

(11) The Eleventh District is composed of part of Armstrong County consisting of the Townships of Boggs, Bradys Bend, Cowanshannock, East Franklin, Hovey (all blocks except 1000 of tract 980300), Kittanning, Madison, Mahoning, Perry, Pine, Rayburn, Redbank, South Buffalo District Western, Sugarcreek, Valley, Washington, Wayne and West Franklin and the Boroughs of Applewold, Atwood, Dayton, Parker City, Rural Valley, South Bethlehem, West Kittanning and Worthington; part of Butler County consisting of the City of Butler and the Townships of Allegheny, Brady, Butler, Center, Cherry, Clay, Clearfield, Concord, Connoquenessing, Donegal, Fairview, Forward, Franklin, Jefferson, Marion, Mercer, Muddy Creek, Oakland, Parker, Penn, Slippery Rock, Summit, Venango, Washington, Winfield and Worth and the Boroughs of Bruin, Callery, Cherry Valley, Chicora, Connoquenessing, East Butler, Eau Claire, Evans City, Fairview, Harrisville, Karns City, Petrolia, Portersville, Prospect, Saxonburg, Slippery Rock, West Liberty and West Sunbury; part of Clarion County consisting of the Townships of Limestone, Monroe, Piney, Porter and Redbank and the Boroughs of Hawthorn, New Bethlehem and Sligo; part of Crawford County consisting of the City of Meadville and the Townships of Athens, Beaver, Bloomfield, Cambridge, Conneaut, Cussewago, East Fairfield, East Fallowfield, East Mead, Fairfield, Greenwood, Hayfield, North Shenango, Pine, Randolph, Richmond, Rockdale, Sadsbury, South Shenango, Sparta, Spring, Steuben, Summerhill, Summit, Troy, Union, Venango, Vernon, Wayne, West Fallowfield, West Mead, West Shenango and Woodcock and the Boroughs of Blooming Valley, Cambridge Springs, Centerville, Cochranton, Conneaut Lake, Conneautville, Linesville, Saegertown, Spartansburg, Springboro, Townville, Venango and Woodcock; all of Erie County; part of Mercer County consisting of the Cities of Hermitage Districts Ne, Nw, Se and Sw (Divisions 1 and 2) and Sharon and the Townships of Coolspring, Deer Creek, Delaware, East Lackawannock, Fairview, Findley, French Creek, Greene, Hempfield, Jackson, Jefferson, Lackawannock, Lake, Liberty, Mill Creek, New Vernon, Otter Creek, Perry, Pine, Pymatuning, Salem, Sandy Creek, Sandy Lake, South Pymatuning, Springfield, Sugar Grove, West Salem, Wilmington, Wolf Creek and Worth and the Boroughs of Clark, Fredonia, Greenville, Grove City, Jackson Center, Jamestown, Mercer, New Lebanon, Sandy Lake, Sharpsville, Sheakleyville and Stoneboro; part of Venango County consisting of the Townships of Clinton, Irwin, Richland, Rockland and Scrubgrass and the Boroughs of Barkeyville, Clintonville and Emlenton; and part of Warren County consisting of the Townships of Brokenstraw, Columbus, Elk, Farmington, Freehold, Glade, Pine Grove, Pittsfield, Spring Creek and Sugar Grove and the Boroughs of Bear Lake, Sugar Grove and Youngsville.

(12) The Twelfth District is composed of part of Allegheny County consisting of the Township of East Deer Wards 1 (all blocks except 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1020 and 1021 of tract 404000) and 2 and the Borough of Tarentum; part of Armstrong County consisting of the Townships of Gilpin District 2, North Buffalo and South Buffalo District Eastern and the Borough of Freeport; part of Cambria County consisting of the City of Johnstown and the Townships of Adams, Allegheny, Barr, Blacklick, Cambria, Chest, Clearfield, Conemaugh, Cresson, Croyle, Dean, East Carroll, East Taylor, Elder, Gallitzin, Jackson, Lower Yoder, Middle Taylor, Munster, Portage, Reade District South, Richland, Stonycreek, Summerhill, Susquehanna, Upper Yoder, Washington, West Carroll, West

Taylor and White and the Boroughs of Ashville, Brownstown, Carrolltown, Cassandra, Chest Springs, Cresson, Daisytown, Dale, East Conemaugh, Ebensburg, Ehrenfeld, Ferndale, Franklin, Gallitzin, Geistown, Hastings, Lilly, Lorain, Loretto, Nanty Glo, Northern Cambria, Patton, Portage, Sankertown, Scalp Level, South Fork, Southmont, Summerhill, Tunnelhill (Cambria County portion), Vintondale, Westmont and Wilmore; part of Fayette County consisting of the Cities of Connellsville Wards 1, 2, 3 and 6 and Uniontown and the Townships of Brownsville, Bullskin, Dunbar Districts 2, 3 and 4, Franklin, Georges Districts 3 and 4, German, Jefferson, Lower Tyrone, Luzerne, Menallen, Nicholson, North Union Districts 1, 2, 4 and 5, Perry, Redstone, Saltlick, South Union Districts 1 and 2, Springhill District 2, Upper Tyrone and Washington and the Boroughs of Belle Vernon, Brownsville, Dawson, Dunbar, Everson, Fayette City, Masontown, Newell, Perryopolis, Point Marion and Vanderbilt; all of Greene County; part of Indiana County consisting of the Townships of Black Lick, Burrell, Center, East Wheatfield, West Wheatfield and White Districts 2, 3, 4 and 6 and the Boroughs of Armagh, Blairsville, Homer City and Indiana; part of Somerset County consisting of the Townships of Conemaugh Districts 2 and 4, Jefferson, Jenner, Lincoln and Middlecreek and the Boroughs of Boswell, Jennerstown, Paint, Seven Springs and Windber; part of Washington County consisting of the Cities of Monongahela and Washington and the Townships of Canton, Carroll, Chartiers Districts 3, 5 and 7, East Bethlehem, Fallowfield, North Bethlehem, North Strabane District 2, Somerset, South Strabane Districts 2, 4 and 5, Union, West Bethlehem and West Pike Run and the Boroughs of Allenport, Beallsville, Bentleyville, California, Centerville, Charleroi, Coal Center, Cokeburg, Deemston, Donora, Dunlevy, East Washington District 2, Elco, Ellsworth, Finleyville, Long Branch, Marianna, New Eagle, North Charleroi, Roscoe, Speers, Stockdale, Twilight and West Brownsville; and part of Westmoreland County consisting of the Cities of Arnold, Latrobe, Lower Burrell, Monessen and New Kensington and the Townships of Allegheny, Bell, Derry, East Huntingdon Districts Bessemer and Strohms, Hempfield Districts Bovard, Hannastown (all blocks except 2003, 2004, 2009 and 2999 of tract 803800) and Luxor, Loyalhanna, Mount Pleasant Districts Bridgeport, Duncan, Hecla, Laurel Run, Mammoth, Ridgeview, Spring Garden, United and Westmoreland, Rostraver, Salem Districts Hugus, Mechlings and Slickville, Sewickley Districts East Herminie, Lowber and Sewickley, South Huntingdon Districts Jacobs Creek, Mineral, Port Royal, Wayne, Wyano and Yukon, St. Clair, Unity Districts Crabtree, Dorothy and Lloydsville, Upper Burrell and Washington and the Boroughs of Avonmore, Bolivar, Derry, East Vandergrift, Hyde Park, Mount Pleasant, New Alexandria, New Florence, North Belle Vernon, Oklahoma, Scottdale, Seward, Smithton, Vandergrift, West Leechburg and West Newton.

(13) The Thirteenth District is composed of part of Montgomery County consisting of the Townships of Abington, Hatfield District 5, Horsham, Lower Frederick, Lower Gwynedd, Lower Moreland, Lower Pottsgrove, Lower Salford, Montgomery, New Hanover Districts 2 and 3, Springfield, Towamencin Districts 1 (Divisions 1, 2 and 3 (only blocks 9001, 9002, 9003, 9004 and 9006 of tract 206904)), 2 and 3, Upper Dublin, Upper Frederick, Upper Gwynedd, Upper Moreland, Upper Salford, Whitemarsh Districts East (Division 1) and Middle (Division 5) and Whitpain Districts 1 and 11 and the Boroughs of Ambler, Bryn Athyn, Hatboro, Jenkintown, Lansdale, North Wales, Pottstown Districts 1, 2, 3 (Divisions 1 and 2 (all blocks except 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2012, 2013, 2014, 2015, 2016, 2017, 3000, 3001 and 3002 of tract 209000)), 4, 5, 6 and 7 and Rockledge; and part of Philadelphia County consisting of the City of Philadelphia Wards 25 (Divisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 17, 18, 19, 21, 22, 23 and 24), 31 (Divisions 18 and 19), 35 (Divisions 1, 2, 3, 4, 5, 6, 7, 8, 9 (only block 8001 of 030500) and 32), 41, 45 (Divisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24 and 25), 53 (Divisions 11, 12, 14, 15, 16, 17, 18, 19, 20, 21 and 22), 54 (Divisions 8 and 18), 55, 56, 57, 58 (Divisions 1, 3, 5, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 42, 43 and 44), 62 (Divisions 17 and 19), 63, 64, 65 and 66 (Divisions 1, 2, 3, 4, 5, 7, 10, 12, 13, 14, 16, 18, 19, 21, 22, 23, 25, 26, 27, 28, 31, 32, 37, 38, 40, 44 and 46).

(14) The Fourteenth District is composed of part of Allegheny County consisting of the Cities of Clairton, Duquesne, McKeesport and Pittsburgh and the Townships of Elizabeth Ward 9, Kennedy, Neville, North Versailles Wards 1, 2, 3 (Division 2), 4, 5, 6 and 7, O'Hara Ward 1 (Division 2), Penn Hills Wards 1, 2, 3 (Division 5), 4 (Division 2), 6 (Divisions 1, 3, 4 and 6), 7 (Divisions 1, 2, 3, 4, 6 and 7), 8 (Divisions 2 and 5) and 9 (Division 5), Reserve, Robinson Districts 3 and 5 and Stowe and the Boroughs of Avalon, Baldwin Districts 1, 2, 3, 4, 5, 9, 11, 12, 13, 15, 16 and 18, Bellevue, Blawnox, Braddock, Braddock Hills, Brentwood Districts 2, 3, 4, 5, 6 and 7 (only blocks 2003, 2004, 2005, and 2010 of tract 478100), Castle Shannon, Chalfant, Coraopolis, Crafton Wards 1, 2 and 3 (Division 1), Dravosburg, East McKeesport, East Pittsburgh, Edgewood, Emsworth, Etna Wards 1 and 2, Forest Hills, Glassport, Glenfield, Homestead, Ingram, Liberty, Lincoln, McKees Rocks, Millvale, Monroeville Ward 1 (Division 1), Mount Oliver, Munhall, North Braddock, Pitcairn Districts 2 and 3, Port Vue, Rankin, Sharpsburg, Swissvale, Turtle Creek, Verona, Versailles, Wall, West Homestead, West Mifflin, Whitaker, Wilkinsburg and Wilmerding.

(15) The Fifteenth District is composed of all of Lehigh County; part of Monroe County consisting of the Townships of Chestnuthill Districts 2 (all blocks except 1121, 2020, 2022, 2027, 2028, 2029 and 2999 of tract 301201), 3 and 4, Hamilton, Jackson and Ross; part of Montgomery County consisting of the Townships of Franconia, Marlborough, Salford and Upper Hanover Districts 1 and 3 and the Boroughs of East Greenville, Green Lane, Pennsburg, Red Hill, Souderton and Telford (Montgomery County portion); and all of Northampton County.

(16) The Sixteenth District is composed of part of Chester County consisting of the Townships of Birmingham, East Bradford District South, East Marlborough, East Nottingham, Elk, Franklin, Kennett, London Britain, London Grove, Lower Oxford District West, New Garden, New London, Pennsbury, Pocopson, West Goshen Districts Middle, North (Divisions 1, 2, 3 (all blocks except 1010, 1013, 1014 and 1026 of tract 302704) and 4) and South and West Nottingham and the Boroughs of Avondale, Kennett Square, Oxford, West Chester and West Grove; all of Lancaster County; and part of Lebanon County consisting of the City of Lebanon and the Townships of Heidelberg, North Cornwall, South Annville, South Lebanon, South Londonderry, West Cornwall and West Lebanon and the Boroughs of Cornwall and Mount Gretna.

(17) The Seventeenth District is composed of all of Columbia County; all of Dauphin County; part of Lebanon County consisting of the Townships of Annville, Bethel, Cold Spring, East Hanover, North Annville, North Lebanon, North Londonderry, Swatara and Union and the Boroughs of Cleona, Jonestown and Palmyra; part of Luzerne County consisting of the Townships of Black Creek, Conyngham, Fairmount, Hanover Wards 1, 4, 5 (Divisions 1 and 2) and 7, Hazle Districts 3 - West Hazleton, 4 - Beaverbrook and 9 - Cranberry (all blocks except 1017, 1018, 1023, and 1024 of tract 217001)), Hollenback, Hunlock, Huntington, Jackson, Lake, Nescopeck, Plymouth, Ross, Salem, Sugarloaf and Union and the Boroughs of Conyngham, Courtdale, Edwardsville, Harveys Lake, Kingston, Larksville, Luzerne, Nescopeck, New Columbus, Plymouth, Pringle, Shickshinny, Swoyersville Wards 1 (Division 2), 2 (Division 1) and 3 and West Hazleton Ward 2 (Division 1); all of Montour County; all of Northumberland County; part of Perry County consisting of the Townships of Buffalo, Howe (only blocks 3000, 3001, 3002, 3010, 3011, 3012, 3013, 3014, 3015, 3016, 3017, 3018, 3019, 3020, 3021, 3049 and 3050 of tract 030200) and Watts and the Borough of New Buffalo; all of Snyder County; and all of Union County.

(18) The Eighteenth District is composed of part of Allegheny County consisting of the Townships of Baldwin, Collier, Crescent, Elizabeth Wards 1, 2, 3, 4, 5, 6, 7 and 8, Findlay, Forward, Moon, Mount Lebanon, North Fayette, North Versailles Ward 3 (Divisions 1, Penn Hills Wards 3 (Divisions 1, 2, 3, 4 and 6), 4 (Divisions 1, 3, 4 and 5), 5, 6 (Divisions 2 and 5), 7 (Division 5), 8 (Divisions 1, 3, 4 and 6) and 9 (Divisions 1, 2, 3 and 4), Robinson Districts 1, 2, 4, 6, 7, 8 and 9, Scott, South Fayette, South Park, South Versailles, Upper St. Clair and Wilkins and the Boroughs of Baldwin Districts 6, 7, 8, 10, 14 and 17, Bethel Park, Brentwood Districts 1, 7 (all blocks except 2003, 2004, 2005, and 2010 of tract 478100), 8, 9 and 10, Bridgeville, Carnegie, Churchill, Crafton Ward 3 (Division 2), Dormont, Elizabeth, Green Tree, Heidelberg, Jefferson Hills, McDonald (Allegheny County portion), Monroeville Wards 1 (Divisions 2, 3 and 4), 2, 3 (Division 4), 4, 5, 6 and 7, Oakdale, Pennsbury Village, Pitcairn District 1, Pleasant Hills, Rosslyn Farms, Thornburg, Trafford (Allegheny County portion), West Elizabeth, White Oak and Whitehall; part of Washington County consisting of the Townships of Amwell, Blaine, Buffalo, Cecil, Chartiers Districts 1, 2, 4 and 6, Cross Creek, Donegal, East Finley, Hanover, Hopewell, Independence, Jefferson, Morris, Mount Pleasant, North Franklin, North Strabane Districts 1, 3, 4, 5 and 6, Nottingham, Peters, Robinson, Smith, South Franklin, South Strabane Districts 1 and 3 and West Finley and the Boroughs of Burgettstown, Canonsburg, Claysville, East Washington District 1, Green Hills, Houston, McDonald, Midway, West Alexander and West Middletown; and part of Westmoreland County consisting of the Cities of Greensburg and Jeannette and the Townships of Cook, Donegal, East Huntingdon Districts Ruffsdale, Stoners and Whites, Fairfield, Hempfield Districts Alwine, Carbon, East Adamsburg, Eastview, Fort Allen, Foxhill, Gayville, Grapeville, Hannastown (only blocks 2003, 2004, 2009 and 2999 of tract 803800), Haydenville, High Park, Lincoln Heights, Lincoln Heights West, Maplewood, Middletown, New Stanton, North Carbon, Sibel, Todd, University, Valley, Weavers Old Stand, Wegley, Wendel Herm, West Hempfield and West Point, Ligonier, Mount Pleasant District Pleasant Valley, North Huntingdon, Penn, Salem Districts Five Points, New Salem, Steeles and Trees Mills, Sewickley Districts Rillton, West Herminie and Whyel, South Huntingdon Districts Hixon and South Huntingdon and Unity Districts Baggaley, Beatty, Dennison, Gravel Hill, Kuhns, Marguerite, Mutual, Pleasant Unity, Roble and Whitney and the Boroughs of Adamsburg, Arona, Donegal, Hunker, Irwin, Laurel Mountain, Ligonier, Madison, Manor, New Stanton, North Irwin, Penn, South Greensburg, Southwest Greensburg, Sutersville, Trafford (Westmoreland County portion), Youngstown and Youngwood.

(19) The Nineteenth District is composed of all of Adams County; part of Cumberland County consisting of the Townships of Cooke, Dickinson, Hampden Precincts 1 and 2, Hopewell, Lower Allen, Lower Frankford, Lower Mifflin, Middlesex, Monroe, North Middleton, North Newton, Penn, Shippensburg, Silver Spring, South Middleton, South Newton, Southampton, Upper Allen, Upper Frankford, Upper Mifflin and West Pennsboro and the Boroughs of Camp Hill, Carlisle, Lemoyne, Mechanicsburg, Mount Holly Springs, New Cumberland, Newburg, Newville, Shippensburg (Cumberland County portion), Shiremanstown (only blocks 3010, 3011, 3012, 3014, 3015, 3016, 3017 and 3018 of tract 011200) and Wormleysburg Precinct 1; and all of York County.

Section 2. First election.

(a) General rule.--The first election under this act shall be held at the primary election in the year 2002.

(b) Current officeholders.--The members of Congress now in office shall continue in the office until the expiration of their respective terms.

(c) Vacancies.--Vacancies now existing or happening after the passage of this act and before the commencement of the terms of the members elected at the election of 2002 shall be filled for the unexpired terms from the districts formerly prescribed by law.

Section 3. Missed political subdivision.

In the event any political subdivision or part thereof should be omitted in the description of the congressional districts, the political subdivision or part thereof shall be included as a part of the congressional district which completely surrounds it. Should any omitted political subdivision or part thereof be not completely surrounded by one congressional district, it shall become a part of that congressional district to which it is contiguous, or if there are two or more such contiguous districts, it shall become a part of that congressional district contiguous thereto which has the least population.

Amend Sec. 1, page 1, line 6, by striking out "1" and inserting: 4

Amend Sec. 1, page 1, line 7, by striking out "a statute" and inserting: this act

Amend Sec. 1, page 1, line 8, by striking out "Congressional" and inserting: congressional

Amend Sec. 1, page 1, line 11, by striking out "Congressional" and inserting: congressional

Amend Sec. 1, page 1, line 11, by striking out "by the statute"

Amend Sec. 6, page 1, line 14, by striking out "2" and inserting: 5

Amend Sec. 2, page 1, line 16, by inserting after "all": congressional

Amend Sec. 2, page 1, line 16, by striking out "by the statute"

Amend Sec. 2, page 1, line 16, by inserting after "the" where it appears the second time: congressional

Amend Sec. 2, page 1, line 18, by inserting after "the" where it appears the second time: congressional

Amend Sec. 2, page 2, line 3, by striking out "Congressional and inserting: congressional

Amend Bill, page 2, by inserting between lines 3 and 4:

Section 6. Repeals and abrogation.

(a) Statutes.--All acts and parts of acts are repealed insofar as they are inconsistent with this act.

(b) Existing plan.--The existing State Congressional Redistricting Plan is abrogated.

Amend Sec. 3, page 2, line 4, by striking out "3" and inserting: 7

Amend Sec. 3, page 2, line 5, by striking out all of said line and inserting:

This act shall take effect as follows:

(1) Section 6(b) shall take effect November 6, 2002.

(2) The remainder of this act shall take effect immediately.

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, amendment A4818 is a congressional redistricting plan for the Commonwealth of Pennsylvania.

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, would the gentleman stand for brief interrogation?

Senator BRIGHTBILL. Mr. President, I will.

Senator MELLOW. Before that, Mr. President, I think this is an issue of such great importance that we should probably have as much order as possible in the Chamber.

The PRESIDENT. I ask that the Members kindly take all sidebar conversations off the floor.

Senator MELLOW. Mr. President, I just wondered, for the information of the Members on this side of the aisle, since it was after the hour of 5 o'clock this evening before we really had an opportunity to look at a map and to go through congressional reapportionment, and now we are being asked to vote on that same map that I am sure took many months to put together, in a period of just about 5 hours, if Senator Brightbill, the Majority Leader of the Senate, or the maker of the amendment or someone else would explain to us exactly what is encompassed or embodied in the amendment for congressional reapportionment.

Senator BRIGHTBILL. Mr. President, the amendment itself basically describes what will be 19 congressional districts in the Commonwealth of Pennsylvania. There is a deviation of about 11

or 12 persons per district, so there is virtually no district-by-district deviation, and I would suggest and make a part of this record that a color map has been distributed to all the Members. On the lower right-hand corner there is a notation on there, plan 515. That, by the way, is an arbitrary number, and the color map displays the Commonwealth and I think more accurately displays amendment A4818 than this speaker could through verbal articulation, other than perhaps actually reading the amendment, which I think if I did that would run great risk of putting the Membership to sleep. But all I can suggest is in terms of a picture is worth a thousand words, and I suggest that the Members look at the congressional redistricting map that they have before them.

Senator MELLOW. Mr. President, could the gentleman explain to us or share with us if there is the creation of any new seats in the map that he has suggested, or proposed through amendment, or if there are any current seats where an incumbent member of the congressional delegation will be placed in the same district as another incumbent member of a congressional district, could he share with us any of that information in the maps that have been presented?

Senator BRIGHTBILL. Mr. President, I could.

The PRESIDENT. He says he can.

Senator MELLOW. Well, Mr. President, let me then further ask him, will he?

The PRESIDENT. Will you?

Senator BRIGHTBILL. Mr. President, I will be happy to do that. If you reference the map, or the amendment itself, we could start with District 18, and District 18 is located in the southwestern corner of this State. It is composed of portions of several counties, and at this time, to the best of my knowledge, there is not an incumbent Congressman living in that district.

In terms of districts that are depicted on this redistricting plan that would perhaps contain two residences of incumbent Congressmen, I would note first off that a person does not actually have to reside in a district to run in that district, as I understand the law. But if we start with District 12, my understanding is that Congressman Mascara and Congressman Murtha both reside in what has been designated District 12. If we go to District 6, my understanding is that Congressman Kanjorski and Congressman Holden both reside in District 6. If we go to District 13, my understanding is that Congressman Borski and Congressman Hoeffel both reside in District 13. And if we go to District 14, my understanding is that Congressman Coyne and Congressman Doyle both reside in that district.

Senator MELLOW. Mr. President, can the gentleman then share with us what new districts have been created and what those new district numbers are?

Senator BRIGHTBILL. Mr. President, I think I indicated that would be District 18.

Senator MELLOW. Mr. President, is there only one new district created in this map?

Senator BRIGHTBILL. Mr. President, my staff has advised me that I missed one. Not insignificant, of course, District 3 is also a new district.

Senator MELLOW. All right, Mr. President, just so we understand, for the purpose of discussion, based on what Senator Brightbill has indicated to us, there are four current districts, eight current Congressmen who represent four current districts have been pitted against one another. From what I understand the gentleman is saying is that Congressman Doyle, if I marked it correctly, is in the same district as Congressman Coyne, two Democrats; that Congressman Murtha, the dean of the delegation, has been put in the same congressional district as Congressman Mascara; that Congressman Kanjorski has been put in the same congressional district as Congressman Holden; and that Congressman Borski has been put in the same congressional district as Congressman Hoeffel. And that, furthermore, two new districts have been created, the 3rd Congressional District and the 18th Congressional District. Is that correct?

Senator BRIGHTBILL. Mr. President, except to say that District 3 was a district that pretty much was eliminated 10 years ago in redistricting, so one could consider that a restoration of a prior existing district from a decade ago.

Senator MELLOW. Mr. President, I thank the gentleman, but just for final clarification, before I would like to be recognized to speak on the plan, is that the new districts that would be created are District 18 in western Pennsylvania – excuse me, Mr. President, District 14 in western Pennsylvania. No, I was right the first time, District 18 in western Pennsylvania–

Senator BRIGHTBILL. You are always right, Senator Mellow.

Senator MELLOW. –and District 3 in southeastern Pennsylvania.

The PRESIDENT. I think he has agreed with that.

Senator MELLOW. Mr. President, he told me I was always right before I expressed what my concern was.

Senator BRIGHTBILL. Mr. President, if I appeared flip, I apologize to Senator Mellow.

Senator MELLOW. It is too early for apologies. Thank you, Senator.

Mr. President, may I be recognized on the plan?

The PRESIDENT. You have the floor, Senator.

Senator MELLOW. Mr. President, it has been rather difficult for Members on this side of the aisle, because of the lack of information that has been shared with us until late this afternoon, to try to be able to draw some conclusion as to the amendment that has been offered by Senator Brightbill. But, Mr. President, I can only make some observations as to the way we have been able to go through the amendment and discuss it with our Caucus.

Mr. President, it does appear, to us at least, that to begin with, in western Pennsylvania, the congressional district that is currently being held by both Congressman Doyle and Congressman Coyne, the 14th District and the 18th District, respectively, have been combined into one district. That district, Mr. President, it appears, will be known as the 14th District and will encompass all of the city of Pittsburgh and some of the surrounding communities in Allegheny County. With the creation of the 14th District, Mr. President, where there are two incumbents currently located in that district, there has now also been the creation of a new congressional district where there is no incumbent in that district, and that would be known as the 18th Congressional District. And it would appear, at least from being able to analyze what has happened in the 18th Congressional District, that perhaps that district, which would be

a new district, would be an area where a Member of this body, or at least a Member of the General Assembly, may in fact want to aspire for a new office, a new congressional district, because it does appear that at least one Member, Senator Tim Murphy, does live in that congressional district.

Mr. President, it also appears, from our observation, that the 11th Congressional District, which currently is the district that is held by Congressman Kanjorski, has now been moved out to the northwestern part of the Commonwealth, and that has been encompassed now into the district which was the 21st District held by Congressman English, and that district, with the exception of changing the name, has added some constituents to what seems to be, for the most part, held in whole. It also appears, Mr. President, that a former Member of this body, Senator Peterson, who is now Congressman Peterson, who represents what now will be the 5th Congressional District and what was the 5th Congressional District will stay about the same. Now, that district has been represented by Congressman Peterson, who was a Republican Member of this Chamber.

Then, Mr. President, it appears that one of the very important changes in this congressional map takes place, and that is the combining of the 12th District, the current 12th Congressional District, and the current 20th Congressional District, one being held by Congressman John Murtha and the other one being held by Congressman Mascara, are being combined, which means that there will be two Democrats who will be combined into a new district that will be established as the 12th Congressional District. Keep in mind, Mr. President, one of those Democrats is the dean of the Pennsylvania delegation and has a tremendous amount of seniority within the Congress of the United States. So, to this point, Mr. President, the 14th and the 18th Congressional Districts, both held currently by Democrats, have been combined and one seat has been eliminated by forming a new seat in the 18th District and the formulation of the 14th Congressional District, where Congressman Doyle lives.

Now, Mr. President, we go down further, after the combination of the Murtha-Mascara district, and we now come into the 9th Congressional District, and that 9th District really maintains the same number and the same status thereabout, and that is held by a Republican, Congressman Shuster, who was elected this past year in a special election, and then we have the 19th Congressional District, which currently will be the same district under this plan that is being held by Congressman Platts. That district does not change appreciably.

There is a change, from the best we can see in this short period of time, in the 16th Congressional District. That congressional district has been held by Congressman Pitts. It will be the same congressional district, but the boundaries will change, Mr. President. It will come from being a district that Congressman Pitts has coming out of Chester, to a district that basically has moved to Lancaster, which I understand now is the home of Congressman Pitts, and that he has relocated his home from when he first ran for Congress, which I guess means currently that he does not live in the congressional district that he currently represents, but with the changing of this map the seat will be moved so that it will include the home in which the Congressman lives today.

Then, Mr. President, we have the 17th Congressional District, and that is a district held by Congressman Gekas. Now, Congressman Gekas, a Republican, also at one time was a Member of this Pennsylvania State Senate, and the district that he represents currently, the 17th District, is in central Pennsylvania. But based on the map that has been submitted to us, Congressman Gekas' district will go from Dauphin County and Snyder County all the way up to suburban Wilkes-Barre into Luzerne County, a rather large district for Congressman Gekas to represent, because he would significantly travel to the east in Pennsylvania.

Then, Mr. President, we have the 10th Congressional District where I live. Now, the 10th Congressional District currently covers much of the rural territory of Pennsylvania, and agriculture being the number one industry in this great State of ours, it is probably a good thing. And it also would cover all of Lackawanna County, including the city of Scranton, Mr. President. Under this plan, the congressional district that I come from that is currently being represented by Congressman Don Sherwood would no longer represent a major portion of the city of Scranton, and it also would eliminate from that district in Lackawanna County the communities of Dunmore, Taylor, and the borough of Moosic. Quite disturbing, when you consider that all I have read in the newspapers in the last week and a half is that Congressman Sherwood was very strong in the indication, although he did not talk to me personally, that he wanted to maintain his representation of Lackawanna County in his congressional district and conveyed that here in Harrisburg and felt that that would be the district he would represent.

Mr. President, in addition to the other districts that have been consolidated, the 14th and the 18th with two Democrats, the 12th and the 20th with Congressman Murtha and Congressman Mascara, we now have the 6th Congressional District. The 6th Congressional District, Mr. President, is a district that would be actually a new district. It will consolidate the current districts that are held by Congressman Kanjorski, which is currently the 11th Congressional District, and Congressman Tim Holden out of Schuylkill County, the 6th Congressional District.

Mr. President, what this does is wreaks havoc on the people of a certain part of the Commonwealth, because in the consolidation of those two districts into one congressional district, it takes in four cities of the third class, and it takes in part of the city of Scranton, a second class-A city. So this congressional district, Mr. President, will go from the southern part of Berks County right up into Lackawanna County to include the city of Scranton. It would take the city of Reading, the city of Wilkes-Barre, the city of Scranton, the city of Hazleton, and the city of Pottsville, Mr. President, four third-class cities and one city that is a second class-A. It would also place three members of the Congress representing Luzerne County. They would include the current Congressman Gekas, the survivor of whoever would take the 6th District, either Kanjorski or Holden, and, of course, the 10th Congressional Congressman, Congressman Sherwood.

Mr. President, the 15th Congressional District is being held today by Congressman Toomey, and that district really does not change much except it adds another part of Monroe County into

that district. Now that district, Mr. President, also is being held by Republican Congressman Toomey, and it seems to have preserved the integrity of the district which he currently has, except to add additional people.

Mr. President, the 8th Congressional District is a district that is held currently by another former Member of this body, and that would be Congressman Jim Greenwood, who was Senator Jim Greenwood. And this plan, again, preserves the integrity of that district for Congressman Greenwood much the way it is today. However, Mr. President, there is a new district that is created, which was mentioned by Senator Brightbill, and that is the 3rd Congressional District. Mr. President, the 3rd Congressional District is a district that was done away with, as was stated, 10 years ago, for whatever the reasons were, by the court. It is kind of amazing that there is also in that new district a Member of this body, a current Member of the State Senate, who is a very distinguished individual, Senator Gerlach, who resides within that district. And I would just have to wonder if this plan passes, if perhaps some of the individuals whom we have mentioned here on the floor of this Senate may not in fact have districts that have been created so that they could run in those districts.

Mr. President, the most disturbing part of this plan for me and for other Members of our Caucus is what has taken place in the new district of the 13th Congressional District. The 13th Congressional District combines two more Democrats. Now, that would make four congressional districts that have been combined, totaling eight Democratic members of Congress, some of which have a tremendous amount of seniority, into four congressional districts. Now, Mr. President, the new 13th Congressional District would combine Congressman Hoeffel and Congressman Borski. The disturbing part of the combination of this district, in addition to the fact that this would be the fourth congressional district that would combine only Democrats, is that Montgomery County, with some 750,000-plus people, will not have their own Congressman to exclusively represent Montgomery County. Montgomery County, based on this plan, would have six Congressmen representing those 750,000 people, instead of doing the appropriate thing and having only one Congressman representing those people. Mr. President, the congressional districts that would be represented within that 13th Congressional District, those Congress people who would represent in those districts would include Congressman Toomey, Congressman Greenwood, Congressman Hoeffel, a new Congressman in the 3rd Congressional District, Congressman Weldon, and Congressman Fattah. It is extremely possible that with the influence of the city of Philadelphia on that district, that Montgomery County would, in fact, not have a resident of that county representing a majority part of Montgomery County, and I find that, Mr. President, to be reprehensible.

Mr. President, the 7th Congressional District is represented currently by Congressman Weldon, a Republican, and his district in this plan would not change.

Mr. President, there are three more districts, and people are going to have to bear with me because this is very important dialogue that must take place, because it is going to draft and design the congressional delegation in Pennsylvania for the next 10 years, and we cannot have 10 minutes of debate and 10 minutes of discussion on what is going to happen in the next 10 years in Pennsylvania.

Mr. President, the 2nd Congressional District, which is currently represented by a former Member of this body, a Democrat by the name of former Senator Chaka Fattah, Congressman Fattah, basically stays intact. It gives us a plan that we can see of about 56 percent of the district would be represented by African-Americans. About 51 percent of that particular district, Mr. President, would be African-Americans above the age of 18 who could have an impact on the vote in that district. I do not know if there is any question about the voting rights, but it is certainly something that has to be taken into consideration. Also, part of that district would have 2.3 percent of those individuals in that district over the age of 18, of voting age, who are Latino.

The 1st Congressional District, also in Philadelphia, would be represented by the same individual who represents them today, and that would be Congressman Brady. It would also be the 1st Congressional District, 49 percent of that district, Mr. President, would be represented by African-Americans who are of voting age, 18 years of age or older, and 13.4 percent of that district, Mr. President, would be represented by Latinos who are of voting age. Mr. President, once again, whether that impacts at all the voting rights of the people of Pennsylvania and the people of those congressional districts and of the African-American and Latino-American people of Pennsylvania is not to be determined by me but to be determined probably by some court.

And then, Mr. President, you have another seat, the 4th Congressional District, which is currently being represented by Congressman, former Senator, Melissa Hart, who served in this body as a Republican Member of the Senate and a Republican member of Congress, Mr. President, and that district has, to a certain extent, been changed, but there is no incumbent placed in that district to fight with another incumbent.

Mr. President, what we find to be so unfortunate about the plan is, first of all, there was no dialogue and there was no input on the part of the Democratic Members of the Senate with regard to the district in which they are represented in this map.

Secondly, Mr. President, there are two new seats that have been created, congressional districts, Mr. President, that have been created in this map. The 3rd Congressional District, which was stated before, and the 18th Congressional District. And, Mr. President, it only seems to be coincidental that there are Members of this body who reside in both of those seats, and I am not stating for fact that they will be a candidate for those congressional districts, but I think there is an excellent chance that if this plan becomes law, at least two Members of this body will become candidates for the newly-created congressional districts.

Mr. President, what is most offensive, in addition to the combination of what has taken place in Montgomery County and in the 6th Congressional District and putting Congressman Murtha against Congressman Mascara, is why four districts impacting eight Democratic members of the congressiona delegation are being put together so that those individuals must run against one another at the expense of someone else. Mr. President, on a quick blush of what has happened, it appears to us that in the plan that has been submitted by the Republicans

here on the floor of this Senate this evening, there are nine solid, iron-clad Republican districts that have been carved out of this plan. The way we look at it, Mr. President would be the 3rd District, the 5th District, the 7th, 8th, 9th, 10th, 16th, 17th, and the 19th Districts would be almost impossible for a Democrat to win the seat because of the way the numbers are stacked, those would be districts that probably would not be competitive. It appears that there are four districts for the Democrats, Mr. President, that probably would not be competitive, and those districts would be the 1st and the 2nd in Philadelphia, the 12th, and the 14th. And it appears, Mr. President, there will be six districts that would be competitive. But of those six districts, Mr. President, three of them today have incumbent Republican members of Congress who probably would run for reelection and I think would have a good chance of being reelected.

The combination of these individuals is at great risk. It is at great risk to the people of the Commonwealth of Pennsylvania, not to the politicians who are here this evening making their speeches or who will make their speeches, and not to the politicians who drafted these maps to the certain point of gerrymandering to benefit one political party over another, to put the people of Pennsylvania potentially at great deficit and at great harm's way in dealing with what is happening in our nation's capital. If you will, Mr. President, I would like to cite just a couple.

First of all, Congressman Borski, who is going to be put in the position of having to run against Congressman Hoeffel, if they both want to stay as members of Congress, he is the ranking member on the Transportation Committee in Congress. There is probably nothing more important in Pennsylvania than the condition of our highways and the condition of our roads and the condition of our bridges. It was only a few years ago, Mr. President, that then Governor Tom Ridge pushed through this body an increase in the gasoline tax and an increase in automobile registration to pay for construction of new roads, which I guess the majority of the Members of this body, on a bipartisan basis, felt was necessary and passed. Mr. President, it combines Congressman Murtha with Congressman Mascara. Now, Congressman Murtha serves on the Appropriations Committee and the Military Affairs Committee. He has been a member of Congress since 1974 with a tremendous amount of seniority and is widely respected nationwide as an individual who knows how to get the job done and best represents his constituency in the Congress of the United States. In fact, he is so well thought of in Congress and in this Senate that when public hearings were held last week, at least one Member of this Senate testified on his behalf, and at least one person who serves as a member of the Republican National Committee testified on his behalf and said what a great fellow he is and what an outstanding job he does in Congress, and we concur with that, Mr. President. And if for some reason he would lose his congressional seat, we would lose a seat on the Appropriations Committee in Pennsylvania, and we would lose a seat on the Military Affairs Committee in Pennsylvania, and knowing what is taking place in this great country of ours today with the fight on terrorism, the battle that is happening in Afghanistan, what does that mean to the people of Pennsylvania and how they are represented?

What does it mean if we lose Congressman Borski in the Congress of the United States with his position on the Transportation Committee with regard to the highway network in Pennsylvania? Congressman Kanjorski, elected to the Congress in 1984, is on the Government Reform and Oversight Committee, something that is very, very important, and the Banking and Finance Committee. Once again, if we lose the seniority of these three individuals, there is no way that a person just elected to the Congress of the United States is going to have this kind of seniority to be able sit on these particular committees.

And, Mr. President, farming and agriculture is the number one industry in Pennsylvania. The only member of the Pennsylvania delegation on the Agriculture Committee is Congressman Holden. The plan that has been submitted for us to consider tonight, at 11 o'clock in the evening, would put Congressman Holden against Congressman Kanjorski, which means if they run against one another, we are either going to lose the Agriculture Committee, because Congressman Holden is the only member of the Pennsylvania delegation on the Agriculture Committee, or we are going to lose the Banking and Finance Committee, or we are going to lose the Government Reform and Oversight Committee with this particular proposal.

Mr. President, it is very unfortunate that other than the State of Michigan, which before tonight had the dubious distinction of combining six congressional districts into three, their plan combined six members of Congress in the State of Michigan who are all Democrats into three congressional districts. We now in Pennsylvania have the dubious distinction of one-upping the State of Michigan, because if this plan is adopted here this evening, Mr. President, what it does is puts four congressional districts or eight members of Congress against one another. So we will have the shameless responsibility of passing Michigan as the State that has put more incumbent members of Congress running against one another than any other State in the United States.

Mr. President, nowhere beyond our wildest imagination did we believe that this type of massacre would take place tonight on the people of Pennsylvania. Mr. President, the shameless work that is being done here this evening at the expense of political ambition cannot happen without many of us talking about it and letting the people of Pennsylvania know just exactly what is happening. Does it try to destroy the two-party system in Pennsylvania as it appears today within our congressional delegation? I do not think there is any question about that. But I guess maybe the only people who really care are the politicians who are interested in check and balance. Does it undermine all that is respectable by eliminating some very important members of Congress with a tremendous amount of seniority? I do not think there is any question about that. Are we put in a position, Mr. President, where today, as we currently talk, there are 21 members of the Congress, there are 11 Republicans and 10 Democrats, and because of a shifting of population and not on a loss in Pennsylvania we must go from 21 members of Congress down to 19 members of Congress, do we have any control over that?

We do not, Mr. President, but we do have control over establishing those who represent the people of Pennsylvania in Congress and to do it in as much of a bipartisan way and

nonpartisan way as possible. This plan, Mr. President, almost guarantees that the congressional delegation will be made up of 13 Republicans and 6 Democrats. It completely ignores the fact that in Pennsylvania, the Republican Party in Pennsylvania, based on registration, is the minority party. There are approximately 450,000 more people who are registered to vote Democratic in Pennsylvania than there are registered to vote Republican, yet this does not take any of that into consideration, and it creates two new congressional seats for individuals who have political ambitions that they would like to serve in the Congress of the United States.

Mr. President, it is very difficult this evening to be able to stand here and defend something that is indefensible. The plan shatters Montgomery County. It places six members of Congress representing a county of 750,000 people. It is impractical and it is foolish, but if the Majority party has its way tonight, it is going to happen. Mr. President, in western Pennsylvania it is laughable and it is ludicrous, because it has one district newly created, the 18th District, that goes from the Ohio border all the way to Ligonier, Mr. President. It is a large area which must be covered, and there is no reason why a district of that size, Mr. President, must be represented in the Pennsylvania congressional delegation. It destroys the integrity of the city that I represent, and that is the city of Scranton, because it takes the city of Scranton and puts a major part of the city of Scranton in a district other than the district it has today and it splits the city of Scranton. Mr. President, it intentionally skews the Democratic vote in Lackawanna County and in the city of Scranton. And if you look at the map and if you take the map of that particular district, which, if people can see the map, I will show it to you even better on here, but I do not know if it can be seen, the yellow part of the map is Lackawanna County that would be represented by the 6th Congressional District. Let me do it this way so we have it the right way. The yellow part of the map is represented by the new 6th Congressional District. The white part of the map is the part of the map that would be currently represented by Congressman Sherwood, the current member of Congress representing Lackawanna County and the city of Scranton. And it goes so far that there are two churches that split the congressional district. If you go to church and you are happy with one Congressman, you can sit on one side of the church and be in one congressional district, and if you are upset with that Congressman, you can sit on the other side of the church and be in another congressional district. It is absolutely amazing what is taking place with that particular map.

Mr. President, we are very upset about the lack of opportunity to present what we think would be important issues into this particular map. Mr. President, we feel that millions and millions of voters in Pennsylvania, based on this map, will be disenfranchised. And I do not think there has ever been a clear indication to the people of Pennsylvania that when you have one party control in the General Assembly, when you have one party control in the Senate, when you have one party control in the House of Representatives, and you have the same party controlling the Chief Executive Office, that absolute power will corrupt absolutely. And I only hope and pray that of the 29 Republican Members in this body, that you will realize that this is a map that is not in the best interests of all the people of Pennsylvania. It may be in the best interests of those who want to run in two new seats; it may be in the best interest of the Republican Party in Pennsylvania. This is not in the best interests of the people of northeastern Pennsylvania, it is not in the best interests of the people of western Pennsylvania where we are going to put Congressman Murtha against Congressman Mascara, it is not in the best interests of the people of southeastern Pennsylvania, and for those of you who represent Montgomery County, because you are giving in to dividing your county of 750,000 people to be represented not by one full member of Congress, which they easily can have, but by six members of Congress.

Mr. President, this is nothing more than a political document, and I would urge, on a bipartisan basis, let us deny the passage of this amendment tonight, let us get back to work tomorrow in a bipartisan way, let us try to work together to give the people of Pennsylvania what they deserve for the next 10 years by properly coming up with a reapportionment plan for the congressional delegation of Pennsylvania.

Thank you very much, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, I would just like to correct the record. Would Senator Thompson stand for interrogation?

The PRESIDENT. It appears he will.

Senator BRIGHTBILL. Mr. President, the gentleman currently represents what area of the State?

Senator THOMPSON. Mr. President, Chester County.

Senator BRIGHTBILL. Mr. President, and prior to serving in the Pennsylvania Senate, what elected position did the gentleman hold in Chester County?

Senator THOMPSON. Mr, President, county commissioner.

Senator BRIGHTBILL. Mr. President, is the gentleman familiar with the county and its municipalities?

Senator THOMPSON. Mr. President, I think so.

Senator BRIGHTBILL. Mr. President, does the gentleman know Congressman Pitts?

Senator THOMPSON. Yes, Mr. President.

Senator BRIGHTBILL. Mr. President, has the gentleman been to his home?

Senator THOMPSON. Yes, Mr. President.

Senator BRIGHTBILL. Mr. President, does the gentleman know who built his home?

Senator THOMPSON. Mr. President, he did it himself.

Senator BRIGHTBILL. Mr. President, does the gentleman know what municipality his home is in?

Senator THOMPSON. Mr. President, East Marlborough Township.

Senator BRIGHTBILL. Mr. President, does the gentleman know what congressional district his home is currently in?

Senator THOMPSON. Mr. President, the district that he now represents.

Senator BRIGHTBILL. Mr. President, has the gentleman examined the congressional redistricting map and amendment A4818 which is before the Senate at this time?

Senator THOMPSON. Mr. President, he is still in that same district.

Senator BRIGHTBILL. Mr. President, has the gentleman examined them?

Senator THOMPSON. Yes, Mr. President.

Senator BRIGHTBILL. Mr. President, as a result of that examination, has the gentleman been able to conclude whether or not Congressman Pitts is located within the 16th Congressional District as proposed tonight?

Senator THOMPSON. He is, Mr. President.

Senator BRIGHTBILL. Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, a couple of comments. The 6th Congressional District, as proposed, also includes Nanticoke and Pittston, which means that it is seven cities. In the area drawn for the 13th Congressional District there is a larger population in Montgomery County than in Philadelphia County, and therefore Montgomery County would control that district.

In terms of the discussion on the minority influence, I agree with the gentleman that ultimately a court will determine whether or not we have hit that legal target. I would suggest, however, that what has occurred in Pennsylvania is what is commonly referred to by people who do this a lot as involuntary retrogression, and what that means is that the congressional districts have grown faster than the minority population, and we believe that amendment A4818, nevertheless, hits the target of providing appropriate representation.

The gentleman made reference to dialogue. Myself, I know that the President pro tempore, I know that many Members of this Caucus, I know that many members of the staff, have had dialogues with every Congressman. Not all of us with every one, but I cannot think of a Congressman who has not somehow or other, if not directly, indirectly through another party, had some kind of dialogue as to what they were interested in during this process.

I would note that Congressional District 3, as proposed, reflects the population surge in the southeastern and central Pennsylvania portions of our State, and the 18th Congressional District reflects changes in voting patterns that are occurring in the southwestern portion of our State.

Mr. President, we believe that the gentleman's concern for Representative Borski is well-taken, and we believe that as presently proposed, the 13th District could well be won by Representative Borski, and we believe that the gentleman's concern for Representative Murtha is also well-taken, and we believe that he would prevail in the 12th District. This district is made even more Democratic than the current district served by Representative Murtha.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Berks, Senator O'Pake.

Senator O'PAKE. Mr. President, I will be brief. Only 3 days ago we commemorated the 60th anniversary of the sneak attack on Pearl Harbor. Tonight, we are faced with a sneak Monday night massacre that sacrifices Democrats and the people of Pennsylvania on the altar of political greed. What we are being asked to do, and what we are very likely going to do if the Republican Members do not stand up to their leadership, is going to be blatantly partisan and very unfair. Whatever happened to all that happy talk about the need for bipartisan cooperation in this legislature? Once again, the Majority is asking us to vote in the middle of the night, 11:10 p.m., on a plan that has never seen the light of day, nor ever been discussed with any Democratic Senator. The Republican leadership is prepared to again use the brute force of their Majority to shove a contrived and convoluted plan down the throats of an unsuspecting public. This time they are marching to the orders of a national party that talks about States' rights but is eager to turn Pennsylvania inside out, upside down, and every which way they can, just to gain a stronger hold on Congress.

No one who looks at this plan can have any doubts. It has only one goal, to put as many Republican Members in Congress as possible, probably 13 or 14 Republicans, and only 5 or 6 Democrats from Pennsylvania. While almost 500,000 more Pennsylvanians regard themselves as Democrats than Republicans, and despite the fact that many years of very important seniority and experience will go into the garbage can when eight Democratic Congressmen are jammed into four districts, we are asked to vote on a plan that so disfigures the interests of Pennsylvanians of the Commonwealth and of its communities that the term "gerrymander" would be a compliment to this monstrosity.

In Congress, seniority means power. Under this plan, Pennsylvanians will sacrifice their clout in Congress for partisan political advantage of a national political party that cares very little for the needs of older industrial States like Pennsylvania. The 2000 census has dictated that Pennsylvania must lose two seats, and now the Washington, D.C., Republican bosses have dictated that we will suffer even more in political clout. For example, as has been mentioned, Congressman Murtha not only serves on the powerful House Appropriations Committee, but is the ranking Democrat on the Defense Subcommittee. Congressman Kanjorski serves on the House Banking and Finance Services Committee. Congressman Borski is the ranking member of the Transportation and Infrastructure Committee. And, by the way, in response to the gentleman's last comments, if Congressman Borski wins that seat, that leaves Montgomery County without any Congressman. Congressman Holden is the only Pennsylvania member of Congress on the Agriculture Committee, our number one industry.

The only problem under this plan is that these men are Democrats. And speaking of our Congressman, Tim Holden, the Senate Democratic plan, which we will be offering shortly, preserves the 6th Congressional District intact, essentially the way it has been for the last 40 years. The Republican plan splits Berks County, one of the largest and fastest growing counties in the State, in two, weakening Berks County's influence in the halls of Congress and making the needs of Reading compete for Federal funding with the cities of Scranton, Wilkes-Barre, and Hazleton. Instead of considering communities of interest and fair representation of people, this plan puts the accumulation of partisan political power ahead of Pennsylvania's interests. As I said, a true Monday night massacre.

This proposal may well pass, Mr. President, but it will be to the shame of the General Assembly and to the detriment of Pennsylvania and its residents. When more and more people refuse to vote because they think their voices do not count, they

will be right. Their cynicism about the political process will be reinforced by your actions tonight.

THE PRESIDENT. The Chair recognizes the gentleman from Cambria, Senator Wozniak.

Senator WOZNIAK. Mr. President, Lieutenant Governor, Senator, and my friend, a few hours ago I was speaking to the Chair and he looked me in the eye and said he did not understand why Congressman Murtha could be so upset about his district; after all, it is going to be 66 percent Democratic. Mr. President, if this was happening in the Chair's congressional district, he would be jumping up and down like Rumpelstiltskin. This district takes a congressional district with an epicenter in Cambria County and moves it in two directions, west, a little sliver into Westmoreland and Indiana, and into Westmoreland again and into Armstrong, and then south, a little sliver through Somerset, a little piece through Fayette, a little thicker in Fayette, into Greene, and into Washington County. There is an old saying, you dance with the girl that brung you, and if you look at this congressional district, it is going to be extremely difficult to represent any one of those particular areas.

The two previous speakers talked about the statewide ramifications. We have eight Democrats vying for four seats. We have no Republicans vying against each one. The French have a term called "noblesse oblige." It was used back in the medieval ages. It meant that the nobles had a responsibility for those underneath them. They were to take care of them. In a sense, the Republican Party, who has control of the Senate, the House, and the administration should be evenhanded and not heavy-handed. This entire structure has been set up to try to make this State extremely lopsided at the expense of its constituency. If the 12th Congressional District moves in the direction that the Republican Party would like it, there are going to be a lot of red-headed stepsisters and stepdaughters in this situation. You cannot represent eight counties by having small pieces of them.

For the folks at home, you cannot see this map very well, but any reasonable human being would say that this is wrong. What we are attempting to do is strike a balance to get the numbers, and I understand how it all operates. But this is ludicrous, and it is outrageous to try to make an attempt to crunch the numbers and couch it behind but look how well we are making it Democratic. Every other district you try to keep everything condensed, the Senate districts, the House districts. If you look at the map very closely, many of the municipalities are split between different congressional districts, and I am sure that the courts of Pennsylvania will not accept such a proposal. I understand it is easier to vote the party line on issues like this, but for once I would appreciate perhaps if Members of the other side of the aisle, many who have communicated to their leadership that they would like to see differences, some have even put it on paper and have gone public about it, that we take this map and redo it. It is tough to get to West Virginia through Cambria, Somerset, Fayette, and Greene, a distance of over 100 miles. You are not doing anybody a favor in west central Pennsylvania. If you look at the political dynamics of our State, two urban centers by sheer population have tremendous political clout. West central Pennsylvania has been able to develop a rapport in Washington because of seniority and because of the ability to send Congressmen back by those areas over and over and over again. By using this map, west central Pennsylvania is going to lose a powerful influence, maybe not immediately, but eventually, and that is not going to serve the rural population of that area well.

I am asking tonight that you deny your vote as a party line, get out from underneath your mother's skirt and vote your conscience. You know what is right, you know what is wrong; you know that this is hardball politics and an even hand would be a lot more fair. I know there is a lot of journey left on this, I do not know what the final analysis will be, but I do believe that we need to go back to the drawing board and try to resurrect a more evenhanded plan for the good of not just the Republicans, not just the Democrats, but for the people whom all of us serve, and that is the people of this Commonwealth.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Schuylkill, Senator Rhoades.

Senator RHOADES. Mr. President, will the Majority Leader submit to brief interrogation.

Senator BRIGHTBILL. Kindly, yes. Happily.

The PRESIDENT. He will.

Senator RHOADES. Mr. President, first, I am not going to ask him if he can draw me a congressional seat, I am not after that.

Senator BRIGHTBILL. Mr. President, the leader is aware of that.

Senator RHOADES. Mr. President, the second point, when I look at these seats, I am satisfied that Schuylkill is whole and that Carbon is whole. I am upset, though, with the way the 6th Congressional District is put together. I am not happy with the configuration of the numbers. The process we are at in terms of amending this bill, is this going to be the final vote that we will have on this bill, or is this part of the process where it will go to the House, be amended there, and then return to us for another vote?

Senator BRIGHTBILL. Mr. President, my belief is that there are two options that can occur here. The House can pass this as is, in which case it would go to the Governor, and if he signed it, this would become the law. The other alternative is that the House would amend this, in which case it would then come back to us for a vote. It is difficult for me to make a judgment based upon my 19 years of experience in the General Assembly, and I would say that it is just as likely that this will come back to us as it is that it would go to the Governor. It is a different political dynamic in the House of Representatives, and because of that, there is a substantial possibility that this could, in fact, be amended, in which case it would come back here.

Senator RHOADES. Mr. President, then I have to understand that we may get a second bite at the apple.

Senator BRIGHTBILL. Mr. President, judging from past experiences, we may get a couple of apples.

Senator RHOADES. Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Washington, Senator Stout.

Senator STOUT. Mr. President. I rise this evening to oppos the Republican amendment to the congressional redistricting plan for the Commonwealth of Pennsylvania. Now, I will not stand before this body and say I fully understand the impact on all 67 counties, but I think I can speak for the counties of southwestern

Pennsylvania which I represent, Washington and Greene Counties.

Things have changed over the years. I remember in 1971, the first redistricting plan that some of us in this Chamber participated in. As a freshman House Member, I remember getting a letter from then Congressman Dr. Morgan, who was the dean of the Pennsylvania delegation, a senior Democrat, and his Republican counterpart, a one-page letter on the redistricting plan. Two people signed it, and that was the plan we adopted. There was a fairness in trying to get a congressional plan in 1971 that met the needs, the concerns of the Commonwealth of Pennsylvania. Now we are into a plan before us that is really unfair to many of the areas of this Commonwealth which have been outlined this evening.

What we are seeing happening in the Republicans' desire to create the 18th District in Allegheny County, Allegheny's population is 1.2 million, and we need 647,000 in a congressional district as a result of the year 2000 census, that would mean Allegheny County should be entitled to two members of Congress, but the Republicans are trying to grab three seats, and the seat they are creating in the 18th District feeds off Washington County and Westmoreland County to get the necessary population to give Allegheny County three members of Congress, and that is unfair to the other counties of southwestern Pennsylvania. We have, over the years, since the dawn of the last century, Washington, Greene, and Fayette Counties have been part of the same congressional district, where they have communities of interest in that region. The people, the demographics, the economics, and the employment patterns, these people need to be represented, not by this plan that is presented before us this evening.

A previous speaker outlined going from Cambria County, Johnstown, clear down through Indiana and Westmoreland Counties and clear into Fayette County and down into Washington and Greene Counties to get the necessary people, and this is unfair. Washington County has been butchered, cut in half, 101,000 in the 12th District and 101,000 in the 18th District. So they weakened and separated Washington County, which is not in the best interest of Washington County, and isolating the people in those districts is grossly unfair. I think what we need to do is come up with a new plan, a fair plan that would represent the needs of the Commonwealth of Pennsylvania, not being put on an altar and sacrificing the representation of the people of this Commonwealth, whether it be Democrats or Republicans, to unfairly structure a system that is unfair to their future needs.

I remember in 1974, the previous speakers have talked about Jack Murtha. He was a State House Member in 1974. After the Watergate resignation of President Nixon, he ran for Congress in 1974 and has been serving in Congress with distinction over these years. The other Congressman who will be put in that district, Frank Mascara, has served since 1994 as a member of Congress with distinction from Washington County and is currently one of the senior people on the Transportation Committee in the House. His district is going to be cut in half and put in a district with Jack Murtha, which would weaken southwestern Pennsylvania.

So I urge the Members to wake up and see the light, what is really happening here this evening, how we are being discriminated against. We have tried to have input into this plan and we have been denied that. I think we need to reject the amendment this evening and come up with a fair plan to redistrict the congressional districts of Pennsylvania. So I urge the Members to oppose the amendments before this body.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentlewoman from Montgomery, Senator Constance Williams.

Senator C. WILLIAMS. Mr. President, as there is absolutely nothing good to say about the Republican reapportionment plan before us tonight, I begin by expressing my gratitude that at least there is nothing really bad to say with regard to that portion of my constituency who are in Delaware County. At least they have been spared a sense of loss and confusion. That cannot be said with regard to most of the citizens I represent, and I rise tonight to express my outrage over the disrespect shown to Montgomery County and to the Republicans and Democrats who live there. Senate Republicans want to divide it in order to conquer it. It is bad enough that a county of three-quarters of a million people should be splintered into six shards, but to do so in order to wield raw political power is reprehensible.

Now to ensure that Montgomery County's interests are represented in Congress, it will take six times the effort, six times the hours, six times the money, and no one, not one of the six representatives, will have anything resembling a mandate to put the needs of Montgomery County first.

Mr. President, Montgomery County has been represented by one member of Congress since the first Congress in 1789. The first Speaker of the United States House of Representatives was from Montgomery County, Frederick Muhlenberg. For more than two centuries, the people of Montgomery County have spoken with one strong, proud voice, but Senate Republicans have chosen to turn a deaf ear to that voice. They have chosen to silence the voice by ripping our communities apart. They have not listened to the thousands of voices, both Republicans and Democrats, who have spoken loud and clear. It is a disgrace.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Wagner.

Senator WAGNER. Mr. President, I also rise this evening to speak in regard to Senate Bill No. 1200. As the Chair and everyone in this Chamber knows, this legislation is reapportionment, and our discussion and our vote in regard to this legislation is vital, absolutely vital to the future of Pennsylvania. Mr. President, we all know in this Chamber what I am going to say, but maybe the listening audience does not.

Every 10 years, we vote on congressional reapportionment. So in a 10-year period, we only get one vote, one single vote, and in that 10 years, Mr. President, we vote on 10 budgets, we vote on hundreds of educational pieces of legislation, hundreds of pieces of transportation legislation, various economic development pieces of legislation, literally thousands, tens of thousands of bills possibly in 10 years. But when it comes to congressional reapportionment, we only have one vote in 10 years. The next vote will be in the year 2011. The reason why I make that point,

Mr. President, is that when we make this vote, we had better make sure it is the right vote.

The public, many times, is not aware about what reapportionment means, and quite frankly, again, all of us in this room know that every 10 years the census information requires us to do reapportionment. That is done in local government with legislative bodies by those legislative bodies. In city councils, if you have nine city council members, you will redraw the districts for nine city council members. At the State level, there are five people appointed by the leaders on both sides of the aisle in the Senate and the House, and then an independent person, and we have just gone through that process. There are 203 House seats, there will continue to be 203 House seats. In the Senate, there are 50 seats, there will continue to be 50 seats. But it is far different, Mr. President, with the congressional reapportionment.

First off, many people in the public do not understand that the power is given to us in the States to do congressional reapportionment, to redraw the boundaries for the people whom we send to Washington. That is given to us as State legislators, that power. And, Mr. President, when it comes to reapportionment, there is none that is more important than the reapportionment or the redrawing of the lines for the congressional seats. Why is that, Mr. President? Again, it is only one vote in 10 years, but more importantly, we know how important it is to have a good delegation of people in Washington to be able to send back dollars to Pennsylvania and to do many other things for this Commonwealth. Over a 10-year period of time, it means literally billions of dollars to this Commonwealth. So it is very important that we have good people in Washington, that we create the boundaries to make sure that the good people who are serving continue to serve, and we create opportunities for other Pennsylvanians to go to Washington and represent us.

Mr. President, I could not help thinking, in looking at the map which I just saw a couple of hours ago, if 10 years ago or even today the Democrats had control of this process and we jeopardized the congressional seat of Congressman Bud Shuster, they would hang us on Front Street in Harrisburg, because Congressman Shuster did so much for Pennsylvania. And everyone in this room knows that. We made sure 10 years ago that we did not eliminate Congressman Shuster. But, Mr. President, tonight, we are jeopardizing some very important people in Washington who may not be with us in the future if this plan passes.

And just another piece of background information. Presently, we have 21 congressional districts in Pennsylvania, 21. Based on the new census information, we lose two. So under the plan in front of us tonight, there will be 19 congressional districts. What happened to the other two? Well, they did not vanish, they went to other States, States in the south and States in the western part of this country that have gained population. Because we lose two, Mr. President, it is even more important that we do this plan right, because now we have two less votes in Washington compared to the last 10 years. And, because we have two less votes, someone else has two more votes, another State. So Pennsylvania is less powerful. All the more reason to make sure that we retain the power that we have with the people who are elected and are now serving us in Washington. We cannot afford, Mr. President, to lose one more congressional member from Pennsylvania, again, because other States are gaining and we are losing.

Mr. President, the way I view this plan, Senate Bill No. 1200 in front of us tonight, not only have we lost two members through reapportionment and the census information that is mandated by law because we lost population, we will lose three additional members of Congress presently serving. So in total, Mr. President, out of 21 serving members, we will lose 5. Therefore, under this plan, Pennsylvania will be far less important in Washington if this plan passes tonight.

Mr. President, in viewing this plan in front of us and seeing the map compared to the congressional districts drawn 10 years ago, this plan is an embarrassment, and I repeat, an embarrassment to the people of Pennsylvania. The bottom line is it hurts the people of Pennsylvania, this plan, if it passes tonight. Mr. President, we all know it makes Pennsylvania less competitive in comparison to not ourselves, not the Republican Party versus the Democratic Party, it makes Pennsylvania less competitive in comparison to other States in this country. And I thought that is what this was all about, to make this State more powerful, in comparison to Michigan and California and Iowa. The way I look at this plan, Mr. President, it makes us less competitive. Our congressional delegation will be less effective in Washington in the future if this plan passes tonight. Why is that? Because as other Senators have indicated, we are combining districts of existing congressional people who are now serving us in Washington.

And I will just briefly mention them again. We are combining Congressman John Murtha and Congressman Frank Mascara, two Congressmen serving in Washington, both Democrats. John Murtha was elected in 1974, he has served for 27 years, very proudly, one of the finest Congressmen in the United States of America. We have chosen to combine Congressman Murtha with Congressman Mascara, who was elected in 1994. Two Democrats, put them both together, let them run against each, you lose one.

Other seats. Congressman Bill Coyne is retiring and his seat has been combined with Congressman Doyle's seat. Again, two Democratic seats are combined to form one seat. Based on both of those situations, we lost two Democrats. In addition, and I do not understand the eastern part of the State as well as the western, but in the eastern part of the State we combined Democratic Congressman Kanjorski, elected in 1984, incidentally, with Democratic Congressman Holden, elected in 1992. Two Democrats against each other, one loses, one is gone.

One other seat. Democratic Congressman Borski, elected in 1982, 19 years' tenure in service in the Congress, versus Congressman Hoeffel, I believe elected 1996. Both Democrats run against each other, one loses, one is gone. At least three existing, serving congressional people we will lose in Washington. When you look at the tenure involved in all these people, we will absolutely, positively, without a doubt lose significant tenure in the Congress of the United States of America representing Pennsylvania. Absolutely, positively. There is no doubt, no one can question what I just said. Everyone knows that.

Why would we do that to ourselves? Why would we stab ourselves in the gut as a State if we want to compete against

other States in this country? That is precisely what we are doing, when in fact we are creating open seats so that new people can run for Congress and be elected and be rookies in Washington. Well, I want to know the rookie congressional newly-elected person who can replace John Murtha. I want to know who that person is. I want to know the new person who can replace Congressman Frank Mascara or Congressman Kanjorski or Congressman Holden or Congressman Borski or Congressman Hoeffel, but especially Congressman Murtha. It is especially troubling to me to stand here tonight and to have a bill in front of us, when Congressman Murtha, who was elected in 1974, and all of us know how important tenure is, tenure determines committee chairs, determines what bills are looked at, what dollars go in the budget, where those dollars go, and what States they come back to. If we ever had an influential Congressman, it is certainly John Murtha. And this plan puts John Murtha up against another Congressman, another very respectable Congressman, and the two will run against each other, and one will lose. Maybe Congressman Murtha will lose. Again, I create the comparison. What if we as Democrats did the same thing to Congressman Bud Shuster when he was in the House of Representatives and chaired the Committee on Transportation? Pennsylvania would have lost, literally, billions of dollars in terms of money coming back to this Commonwealth. The same thing is going to happen if we lose Congressman Murtha. And if you do not believe me, go to Johnstown, Senator Wozniak's district, and see what Congressman Murtha has done for Cambria County. Come to Pittsburgh, and I will show you what he has done in Oakland in terms of the supercomputing center. But we are going to cast a vote tonight to risk the future of Pennsylvania by losing perhaps the most influential Congressman not just in Pennsylvania but in the entire United States of America when it comes to bringing home dollars related to defense contracts. That is what we are going to jeopardize. I cannot believe that we are going to approve Senate Bill No. 1200. I am certainly not going to vote for it. I know the people on this side of the aisle are not going to vote for it, and we are going to jeopardize losing a person who has that much influence in the Congress of the United States of America.

Mr. President, this is a bad deal for Pennsylvania. That is the bottom line. That is the only bottom line. When we begin to risk tenure, influence, status in Washington, we have to look in the mirror and say, what are we doing to ourselves? And we know we are seriously harming our ability to be effective as a State, not just within a State, but a State competing against the other 49 States in this country, and a State that has influential people in regard to international influence in this world. That is what we are jeopardizing, people with tenure of 10 years, 20 years, 30 years in Washington who understand the process. And we are in essence saying, okay, Alabama, you are going to have more influence than we are, or California or Texas. Well, they have enough going for them anyway, because they are gaining population. We are losing population, and now we are going to get rid of our own people? I cannot believe it.

This bill is not in the best interest of Pennsylvania. It is that simple, Mr. President, and we all know that. It is not just about politics, because this is more than politics. This is about power as a State and power to the people. As a matter of fact, our Constitution indicates in Article I, Section 2, of the Pennsylvania Constitution: "All power is inherent in the people...." Simple statement. "All power is inherent in the people...." Mr. President, we are taking power away from the people if we pass Senate Bill No. 1200.

Mr. President, this legislation is contrary to the purpose of this government. If we want to make Pennsylvania stronger, we have to make sure that Congress and the congressional people whom we send there are stronger. We cannot take away their ability to be effective, we cannot take them away, and that is precisely what amendment A4818 is suggesting we do. Mr. President, I suggest we go back to the drawing board and come back with a better piece of legislation that does not eliminate tenured congressional representatives, that does not stab ourselves in the gut, and something that is in the best interest of Pennsylvania. Let us either push aside amendment A4818 or vote it down.

Thank you.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, I just want to comment briefly on what I perceive to be a kind of fiction that is being promoted, and I need to clarify the record here. The impression that I think people who would listen to this debate would have is that when you represent an area, your representation stops where your district stops. As a result of that, if I represent, for example, as I do western Berks County and have never represented the city of Reading, that I would have no interest and no concern about the city of Reading. And I know in my case personally, and I believe in terms of dealing with not only State House Members but Congressmen and people in this Chamber, that is exactly not true, and I can cite specific examples.

For example, in Reading there was a movement afoot to build a convention center in the city of Reading. It was not in my district. Some of the people who were involved in this resided in my district, and I know that the Governor was a Democratic Governor, and because Senator O'Pake was there representing Berks County, there was a substantial sum of money in the form of a grant of some kind that went to this convention center. And at the same time, they needed a law to implement this, and when it came to getting this law done, and I am not sure if we were in the Majority or the Minority, but for whatever reason, in this Chamber I took the leadership role to get that law done. Senator O'Pake was very supportive, but the nits and grits and nuts and bolts were done by me. And the interesting thing is that seated to the rear of this Chamber is Pete Decoursey, who works now for the Harrisburg paper, and Pete at that time worked for the Reading paper, and I remember him sitting in my office stating that he was amazed that, unlike in Congress, Members actually make decisions regarding how we are going to handle amendments and that sort of thing, because I think Pete used to work for a Congressman.

But I was going to bat for the city of Reading not because it was in my district, but because it was important to a county that I had a substantial piece of. Senator O'Pake, who referred to this, kind of amusingly, as a sneak attack a la Pearl Harbor, Senator O'Pake knows that within the last couple of weeks he and I were at a museum and we were there because that museum, not the museum itself, but a neighbor, The Children's Home, got a

substantial grant, and Senator O'Pake knows that I played a very significant role in getting that grant, as I believe he did, as did the administration, as did some House Members, and we were there as a team. Now, that is not in the 48th Senatorial District, but that is in Berks County, and I was there trying to help and trying to do my best, because a portion of my district is in Berks County. And one can go to example after example, and the other side of that same coin is that I can look back over the last 18, 19 years, and I can remember a time when I put up a vote that had nothing to do with my district but was perceived to be negative as to Berks County, and the newspaper felt quite comfortable criticizing me for that vote, even though it was not in my district and did not impact at all on my district, but they believed that it impacted negatively on Berks County.

Now, what does that mean as a practical matter? Well, for example, on this map, Lebanon County has three Congressmen, and we can go to, under the current map, Congressman Gekas, who does a terrific job, and we feel particularly comfortable with him when it comes to Indiantown Gap. He has that area, and it was one of those things that I personally thought was a priority and wanted to see. We have a VA hospital, and that is now in a district that is going to be represented by Congressman Pitts. Congressman Pitts has a background in the military, has a real interest in those things. And I think, Joe, who I believe is a veteran, would be the perfect person to be representing our veterans' hospital. And the person, whoever that is going to be, who represents the 3rd, is going to have the eastern part of the county, and what that means is that if Lebanon County needs something from Washington, D.C., which believe me does not happen very often, but if it does, there are three Congressmen they can go to. Now, my recollection and my experience takes me back to a time, I am guessing this is more than 10 years ago, maybe 15, and we needed something from Washington, and we had one Congressman and we went to that Congressman, and we went to that Congressman, and we went to that Congressman, and we went to that Congressman. And eventually, because we had one Congressman and were kind of trapped in with this one Congressman, this Congressman decided he was going to promote it, and it became controversial in Washington, and it is a long story. But the point is, we now will be in a position where the county administrator or one of the county commissioners can call up three people in Congress, three staff guys, and say, hey, we need some help.

Well, you know what is interesting? Look at this map, and look at Congressman Murtha's district. In that district, what could be more complimentary of Congressman Murtha than the fact that, lo and behold, it does go into Allegheny County. Not a lot, but what does that mean? That means that Allegheny County, the executive, James Roddey, can pick up the phone and say, hey, Murtha, you have a big piece of my county, and you have to go to bat for us, and so can most of southwestern Pennsylvania. And, frankly, what we are doing, and, you know, the law has cut us back two Congressmen, and we are doing the best we can to spread the talent, and I think that is important. I used to kid during the last reapportionment that the only goal I had was to bring Bud Shuster into Lebanon County, and that was because Bud, of course, was very influential in terms of getting highways. My good friend, Senator Jubelirer, blocked that. He had a good thing going and he did not want to change that. I said we could bring him right down the turnpike and bring him right into Lebanon County, because we have some highway projects. As it turned out, Congressman Gekas did a good job anyway, and we really did not need him, but the point is, these Congressmen, unless they are very unusual and very narrow individuals, their representation does not start and stop with their districts, and they are going to represent areas of this State that their districts go into.

I believe this is an excellent map. I think it reflects the changing demographics, as I mentioned before, and I think that it is a good map. I mean, in the 6th Congressional District, it pits two people. I personally would like to see Congressman Holden win that district. I have many people in Berks County who would like to see Congressman Holden particularly representing Reading. The area of Reading has a proposed project. That project includes a bridge that crosses a river. Guess what we did? The Reading side of the bridge is in one congressional district, and the Wyomissing side of that bridge is in the other congressional district. So, now instead of having one Congressman down there, we are going to have two.

And let me just say this about mixed representation. I have many, many constituents in Reading who have mixed representation, and they say, gee, you know, it is great having you there, Chip, even though we have a Republican Governor, and so forth and so on. And, you know, if we end up with a Democratic Governor, you and Senator O'Pake can go to bat, Senator O'Pake can go and talk to the Governor, you can deal with the House and the Senate, if they happen to be Republican, and we have a one-two punch that is going to get the job done. Actually, it is a one-two-three punch.

Senator O'Pake, I am glad to see you smiling. I am glad to see you applauding. But you know what I am saying is that I have been a good soldier for Berks County, and the mere fact that most of this stuff that we talked about, and a lot of things like the Sovereign Center, not in my district, it is in Reading. Is what is good for Reading good for Berks County? Yes, it is. Is Chip Brightbill on board? Yes, he is. And it is the same with every one of these districts, Mr. President. So, let us get on, let us vote, and let us see where people are.

Thank you very much.

The PRESIDENT. The Chair recognizes the gentlewoman from Philadelphia, Senator Schwartz.

Senator SCHWARTZ. Mr. President, I will try to be brief. The hour is, of course, quite late. The previous speakers have made a variety of points, and certainly the most recent comments about the fact that all of us work very hard to represent our districts and try to do a good job to represent all of their interests I think is a point well-taken. Regardless of how we draw the map, and no matter how bad it is, how badly drawn it is, how inappropriately drawn it is, whoever gets elected I believe will try very hard to represent the interests of their constituents and do the best job they possibly can.

But this map, Mr. President, makes it harder, and there is n reason for us not to try to do a better job to present a map to the people of Pennsylvania that will do what is really intended here, which is not, as I previously heard, to make sure that every district has as many different representatives as possible. I do not

think there is anything in the law or anything even in the case law that would suggest that that should be the top priority, to make sure that every county has as many Congress people representing it as possible. It is interesting and that may be what dictated the map here, but in fact what is supposed to happen when you do redistricting every 10 years is to represent the people of this country and to make sure that they have as close as possible one person, one vote. That the deviation is as small as possible. I believe that did happen.

But this is about representation. It is about responding to changes in demographics, to respond to changes as people move around in this country, it is to respond to growth in some areas over others, and in the process to make sure, as best as possible, that people as individuals and their communities are represented and well-represented, and this map apparently does not do that. You have heard many of the speakers already talk about that, and I will talk just very specifically about Montgomery County, which is the third largest county in the State, that has almost 900,000 people in it, and I know I have, as a representative of Montgomery County, been presented with 13,000 signatures on a petition from people from Montgomery County that said we know we are at some risk here, we know that we are a large county, we know that for political purposes we could be divided up. Do the best you can to keep us as whole as possible. And I want to say that both Republicans and Democrats asked for that to happen. There have been numerous articles in the paper. Everyone has said, look, once the election happens, we will go about this and have a fair fight, but give us a chance to really be kept together as much as possible. And that most certainly did not happen. There will be 6 Congress people out of 19 representing Montgomery County. It is a lot of Congress people. And while you might want to say, well, that makes six Congress people caring about Montgomery County, it also means that there will not be someone who specifically says that I represent Montgomery County and I will attend to these issues. And it is what the people, it is what the voters have asked for.

So I believe that this plan is actually disrespectful of knowing those 13,000 signatures, and all of us know how hard it is to get 13,000 signatures on a petition. But the leadership here, the Republican leadership, decided that the interests of the people in Montgomery County, their voices, should be ignored. They rejected, and I believe were disrespectful of the people of Montgomery County in rejecting their requests for the county to be kept as whole as possible. Instead, for purely partisan political purposes, they decided to draw the map very differently. And while it might create some new opportunities, it certainly creates some new challenges, and it creates change for the people of Montgomery County as it does when you look at the statewide map for many, many people.

The real bottom line has to be, will this be the best way to have drawn the map to assure representative government? That is what this has to be about. It has to be about representing the concerns of the people and giving the people representatives in Washington who will speak on their behalf and represent their concerns, whether it is geographically, demographically, around particular issues and concerns, but it is responding to population changes in a way that seems to be far less concerned about the interests of the people and getting their concerns represented than about drawing lines that allow for political opportunity for one party over another. That is not what this process is supposed to be about. And if we actually had the opportunity, as was suggested by a previous speaker, to allow for that mix in the drawing of this map, that would have allowed us to be able to represent our constituents and speak up for them, to assure that they can be represented well in Washington, I believe this map would have looked a lot different and would have been far more representative of the people of the Commonwealth of Pennsylvania. And while I agree that the elected Congress people, once elected, will try to do the best they possibly can, we should have given them and we should still give them a better chance at doing that for the people they will represent in their congressional districts. So while it was not easy to reduce the congressional delegation of Pennsylvania from 21 to 19, we could have and should have done a better job. I say we reject this map and set about drawing a better map that will better represent not only the people of Montgomery County, but the people of the entire Commonwealth who have asked for their congressional representation to, in fact, reflect them and their geographic area and their demographic profiles, and this map does not do that.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Fayette, Senator Kasunic.

Senator KASUNIC. Mr. President, I rise to voice my opposition to this redistricting plan that is before us. It is unfortunate that we are here tonight at this late hour considering this plan that does nothing, absolutely nothing, for the people of Pennsylvania. No, Mr. President, this plan does not have the interests of Pennsylvanians in mind. Instead, it has the interests of ensuring a Republican Majority for years to come. And the representation of the hardworking Pennsylvanians, particularly those in rural areas, falls to the wayside by the enactment of this legislation. This plan combines the districts of eight Democratic incumbents into four. Miraculously, Mr. President, not one single Republican, not one single Republican incumbent, loses their district in this plan.

It is very important, I feel, and I think all of us as a body should feel, it is important to recognize the needs of urban and suburban constituents and to know that they differ from those living in rural areas and small towns. The needs of the rural and small town constituents of Washington, Greene, Somerset, and Fayette Counties differ from the needs of the mainly urban and suburban areas of Allegheny County. Mr. President, the current 20th District is represented by Frank Mascara, the 12th District is represented by Jack Murtha. These districts are currently comprised of distinct communities of interest. The residents of Greene County do not share similar economic, cultural, and demographic factors with Cambria County. The residents of Washington County do not share employment profiles and educational attainment as those of Somerset County.

We need to be responsible tonight. We need to keep these districts intact, particularly Washington and Greene Counties, which have historically shared human services. Likewise, Cambria and Somerset Counties have done the same. Washington, Greene, and Fayette Counties are all included in the same PennDOT engineering district. Intermediate Unit 1 is also comprised of these three counties. Mr. President, it is clear that

these communities should continue to stay in separate congressional districts. Congressman Mascara currently serves as the second ranking member from Pennsylvania on the House Transportation Committee. At stake, Mr. President, are the seats at the table for upcoming transportation funding, which will take place in the year 2003. The future of many projects lie in the balance, projects such as the Mon-Fayette Expressway and MAGLEV, which are at critical stages and in dire need of Federal funding. It is important to have a seat at the table in order to ensure that these worthy projects receive Federal funding. Mr. President, Pennsylvania will undoubtedly lose millions of dollars if we do not have representation on this very important Transportation Committee.

Likewise, the 12th Congressional District is currently represented by Jack Murtha. Mr. President, I do not need to go into any speeches about Jack Murtha. It has already been said here tonight about his power and his influence and his ability to get things done, a man that is known not only as the dean of the delegation here to us as Pennsylvanians, known nationwide, but also is a household name in many of the foreign countries that he has been asked and called upon by the President and by Congress to visit and to work out deals and to make things happen.

Also, his ability to bring jobs back to the 12th District. He has single-handedly brought many jobs back to the 12th District and put people back to work again, making a viable living wage. The 12th Congressional District needs him, and the 20th needs Frank Mascara. Congressman Murtha is on the powerful Appropriations Committee, and we all know, we all know what it is like and why it is important to have somebody on that Appropriations Committee. Each and every one of us in this room, every 2 years, is trying to get a seat on that committee right here in this Chamber. Mr. President, how can we as responsible public officials endorse a plan that weakens Pennsylvania's clout in Washington, and how can the Republican Majority endorse a plan that ignores the needs of Pennsylvania's residents for political gain? This plan does nothing but ensure Republican incumbents and Republican supremacy. It does nothing but disenfranchise thousands and thousands of Pennsylvanians, all for political gain.

Mr. President I urge my colleagues on the other side of the aisle to do what is right for Pennsylvania and oppose this plan. Please, in the best interests of the Commonwealth of Pennsylvania, let us reject this plan tonight, start over tomorrow morning, let us have dialogue between both Democrats and Republicans who will come up with a plan that is in the best interests of all Pennsylvanians.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Dauphin, Senator Piccola.

Senator PICCOLA. Mr. President, I rise in support of the Brightbill amendment to Senate Bill No. 1200 and to correct the record in a small manner with respect to some of the statements of one of the prior speakers.

The lady from Philadelphia who represents a portion of Montgomery County, I believe, indicated on the record that Montgomery County was a county of a population of about 900,000 people. I believe a more accurate figure would be that the census of the year 2000 reflected a population for Montgomery County of about 750,000. The remarks of the lady also indicated that there was the likelihood that Montgome County would be without a Congressman after next year's election. In all actuality, the map that is before us now in this amendment is very similar to the map that was drawn 10 years ago after the 1990 census. Ten years ago, Montgomery County was, and presently as we speak, represented by five Congressmen, one of which the 13th District was substantially within Montgomery County, and the Congressman, of course, resides in Montgomery County. Only a minor change has been made under this plan as proposed by Senator Brightbill, whereas instead of five Congressmen, Montgomery County will have parts of six congressional districts, but once again, the substantial district within the county will be the 13th District, and in fact, the majority of the 13th District will be within Montgomery County. So the likelihood is that Montgomery County will have an excellent opportunity to elect a member of Congress from the 13th District, not unlike what is presently in force and effect under the present congressional reapportionment plan in law today.

Mr. President, I urge that this plan be adopted and that the Senate pass this proposal on to the House of Representatives for its concurrence.

LEGISLATIVE LEAVES

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, I request legislative leaves for Senator Fumo and Senator Anthony Williams.

The PRESIDENT. Senator Mellow requests legislative leaves for Senator Fumo and Senator Anthony Williams. Without objection, those leaves are granted.

And the question recurring,
Will the Senate agree to the amendment?

The yeas and nays were required by Senator BRIGHTBILL and were as follows, viz:

YEA-27

Armstrong	Gerlach	Mowery	Scarnati
Brightbill	Greenleaf	Murphy	Thompson
Conti	Helfrick	Orie	Tomlinson
Corman	Holl	Piccola	Waugh
Dent	Jubelirer	Punt	Wenger
Earll	Lemmond	Rhoades	White, Mary Jo
Erickson	Madigan	Robbins	

NAY-22

Bodack	Kitchen	O'Pake	White, Donald
Boscola	Kukovich	Schwartz	Williams, Anthony H.
Costa	LaValle	Stack	Williams, Constance
Fumo	Logan	Stout	Wozniak
Hughes	Mellow	Tartaglione	
Kasunic	Musto	Wagner	

A majority of the Senators having voted "aye," the question was determined in the affirmative.

On the question,
Will the Senate agree to the bill on third consideration, as amended?

Senator O'PAKE offered the following amendment No. A4552:

Amend Title, page 1, line 1, by striking out "Requiring" and inserting: To apportion the Commonwealth of Pennsylvania into congressional districts in conformity with constitutional requirements; providing for the nomination and election of Congressmen; and requiring

Amend Title, page 1, line 2, by striking out "Congressional" and inserting: congressional

Amend Bill, page 1, by inserting between lines 5 and 6:

Section 1. Congressional districts.

For the purpose of electing representatives of the people of Pennsylvania to serve in the House of Representatives in the Congress of the United States, this Commonwealth shall be divided into 19 districts which shall have one Congressman each, as follows:

(1) The First District is composed of part of Delaware County consisting of the Township of Darby Wards 1 and 2 and the Borough of Colwyn; and part of Philadelphia County consisting of the City of Philadelphia Wards 1, 2, 5, 10 (Divisions 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, 21, 22, 26 and 27), 11, 12, 13, 14, 16, 17, 18, 20, 23 (Divisions 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23), 25, 26, 30, 31 (Divisions 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19), 32, 33 (Divisions 3, 4, 5, 6, 7, 8, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24), 36, 37, 39, 40, 43 (Divisions 1, 9, 10, 13, 14, 15, 16, 21, 22, 23, 24 and 25), 45, 47, 48, 49 (Divisions 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 16, 17, 19, 21, 22 and 23), 51, 55, 59, 62 and 64.

(2) The Second District is composed of part of Delaware County consisting of the Township of Upper Darby Districts 4 (Divisions 5, 6, 7, 8, 10 and 11), 5 (Division 2), 6 and 7 (Divisions 1, 2, 3, 4, 5, 7, 8, 9 and 11) and the Boroughs of Darby, East Lansdowne, Millbourne and Yeadon; and part of Philadelphia County consisting of the City of Philadelphia Wards 3, 4, 6, 7, 8, 10 (Divisions 1, 2, 3, 4, 11, 12, 13, 14, 15, 23, 24, 25, 28 and 29), 15, 19, 21, 22, 23 (Divisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13), 24, 27, 28, 29, 31 (Division 2), 33 (Divisions 1, 2, 9, 11 and 12), 34, 35, 38, 42, 43 (Divisions 2, 3, 4, 5, 6, 7, 8, 11, 12, 17, 18, 19 and 20), 44, 46, 49 (Divisions 7, 8, 9, 18, 20, 24 and 25), 50, 52, 53 (Divisions 5, 7, 9 and 23), 60 and 61.

(3) The Third District is composed of all of Beaver County; part of Fayette County consisting of the City of Uniontown and the Townships of Brownsville, Bullskin, Franklin, German, Jefferson, Lower Tyrone, Luzerne, Menallen, Nicholson, Perry, Redstone, Saltlick, South Union, Springhill, Upper Tyrone and Washington and the Boroughs of Belle Vernon, Brownsville, Dawson, Everson, Fayette City, Masontown, Newell, Perryopolis and Point Marion; all of Greene County; all of Washington County; and part of Westmoreland County consisting of the Cities of Greensburg, Jeannette and Monessen and the Townships of Hempfield, North Huntingdon Wards 1 (Divisions 1 and 3), 2 (Division 3) and 3, Rostraver, Sewickley and South Huntingdon and the Boroughs of Adamsburg, Arona, Hunker, Madison, Manor, New Stanton, North Belle Vernon, Penn, Smithton, South Greensburg, Southwest Greensburg, Sutersville, West Newton and Youngwood.

(4) The Fourth District is composed of part of Butler County consisting of the Townships of Brady, Cherry, Clay, Concord, Connoquenessing, Forward, Franklin, Jackson, Jefferson, Lancaster, Marion, Mercer, Muddy Creek, Penn, Slippery Rock, Washington and Worth and the Boroughs of Connoquenessing, Evans City, Harmony, Harrisville, Portersville, Prospect, Saxonburg, Slippery Rock, West Liberty, West Sunbury and Zelienople; all of Crawford County; all of Erie County; all of Lawrence County; and all of Mercer County.

(5) The Fifth District is composed of part of Armstrong County consisting of the Townships of Boggs, Bradys Bend, Cowanshannock, East Franklin, Hovey, Madison, Mahoning, Perry, Pine, Plumcreek, Rayburn, Redbank, Sugarcreek, Valley, Washington, Wayne and West Franklin and the Boroughs of Applewold, Atwood, Dayton, Elderton, Kittanning, Parker City, Rural Valley, South Bethlehem, West Kittanning and Worthington; part of Butler County consisting of the City of Butler and the Townships of Adams, Allegheny, Buffalo, Butler, Center, Clearfield, Clinton, Cranberry, Donegal, Fairview, Middlesex, Oakland, Parker, Summit, Venango and Winfield and the Boroughs of Bruin, Callery, Cherry Valley, Chicora, East Butler, Eau Claire, Fairview, Karns City, Mars, Petrolia, Seven Fields and Valencia; all of Cameron County; part of Centre County consisting of the Townships of Benner, Boggs, Burnside, College, Curtin, Ferguson, Haines, Halfmoon, Harris, Howard, Huston, Liberty, Marion, Miles, Patton, Rush, Snow Shoe, Spring, Taylor, Union, Walker and Worth and the Boroughs of Bellefonte, Howard, Milesburg, Millheim, Philipsburg, Port Matilda, Snow Shoe, South Philipsburg, State College and Unionville; all of Clarion County; all of Clearfield County; part of Clinton County consisting of the Townships of Beech Creek, Lamar, Porter and West Keating and the Borough of Beech Creek; all of Elk County; all of Forest County; all of Jefferson County; all of McKean County; all of Venango County; and all of Warren County.

(6) The Sixth District is composed of all of Berks County; part of Carbon County consisting of the Townships of East Penn, Lower Towamensing, Mahoning and Towamensing and the Boroughs of Bowmanstown, Lansford, Palmerton, Parryville, Summit Hill and Weissport; part of Montgomery County consisting of the Townships of Upper Pottsgrove and West Pottsgrove and the Borough of Pottstown Districts 1 (Division 1), 3, 4 and 5; part of Northumberland County consisting of the Cities of Shamokin and Sunbury and the Townships of Coal, East Cameron, East Chillisquaque, Jackson, Jordan, Little Mahanoy, Lower Augusta, Lower Mahanoy, Mount Carmel, Point, Ralpho, Rockefeller, Rush, Shamokin, Upper Augusta, Upper Mahanoy, Washington, West Cameron and Zerbe and the Boroughs of Herndon, Kulpmont, Marion Heights, Mount Carmel, Northumberland, Riverside and Snydertown; and all of Schuylkill County.

(7) The Seventh District is composed of part of Bucks County consisting of the Townships of Buckingham Districts Lower (Division 1), Middle and Upper, Doylestown, Hilltown, New Britain, Northampton Districts 1, 4, 8, 12 and 13, Warrington, Warwick, West Rockhill and Wrightstown and the Boroughs of Chalfont, Doylestown, Dublin, Ivyland, New Britain, Perkasie District 3, Sellersville, Silverdale and Telford (Bucks County portion); part of Chester County consisting of the Townships of East Coventry, East Pikeland, East Vincent, Easttown, North Coventry, Schuylkill, South Coventry and Tredyffrin and the Boroughs of Phoenixville and Spring City; part of Delaware County consisting of the Townships of Darby Wards 3, 4 and 5, Edgmont, Haverford, Marple, Newtown, Radnor, Ridley Wards 2 (Divisions 1 and 3), 4 (Division 2), 5 (Division 1) and 8 (Division 1), Springfield, Thornbury, Tinicum, Upper Darby Districts 1, 2, 3, 4 (Divisions 1, 2, 3, 4 and 9), 5 (Divisions 1, 3, 4, 5, 6, 7, 8 and 9) and 7 (Divisions 6 and 10) and Upper Providence and the Boroughs of Aldan, Clifton Heights, Collingdale, Folcroft, Glenolden, Lansdowne, Morton, Norwood, Prospect Park, Rutledge, Sharon Hill and Swarthmore; and part of Montgomery County consisting of the Townships of Douglass, Franconia, Limerick, Lower Frederick, Lower Pottsgrove, Lower Salford Districts 1, 2, 3, 4 and 5, Marlborough, New Hanover, Perkiomen, Salford, Upper Frederick, Upper Hanover and Upper Salford and the Boroughs of East Greenville, Green Lane, Pennsburg, Pottstown Districts 1 (Division 2), 2, 6 and 7, Red Hill, Schwenksville, Souderton and Telford (Montgomery County portion).

(8) The Eighth District is composed of part of Bucks County consisting of the Townships of Bensalem, Bridgeton, Bristol, Buckingham District Lower (Division 2), Falls, Lower Makefield, Lower Southampton, Middletown, Newtown, Northampton Districts 2, 3, 5, 6, 7, 9, 10, 11, 14, 15, 16 and 17, Plumstead District 1, Solebury, Tinicum, Upper Makefield, Upper Southampton and Warminster and the Boroughs of Bristol, Hulmeville, Langhorne, Langhorne Manor, Morrisville, New Hope,

Newtown, Penndel, Tullytown and Yardley; and part of Philadelphia County consisting of the City of Philadelphia Wards 41, 53 (Divisions 1, 2, 3, 4, 6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22), 54, 56, 57, 58, 65 and 66.

(9) The Ninth District is composed of all of Bedford County; all of Blair County; part of Centre County consisting of the Townships of Gregg, Penn and Potter and the Borough of Centre Hall; part of Cumberland County consisting of the Townships of Cooke, Dickinson, Hampden Precincts 1 and 6, Hopewell, Lower Frankford, Lower Mifflin, Middlesex, Monroe, North Middleton, North Newton, Penn, Shippensburg, Silver Spring, South Middleton, South Newton, Southampton, Upper Frankford, Upper Mifflin and West Pennsboro and the Boroughs of Carlisle, Mechanicsburg, Mount Holly Springs, Newburg, Newville and Shippensburg (Cumberland County portion); all of Franklin County; all of Fulton County; all of Huntingdon County; all of Juniata County; all of Mifflin County; all of Perry County; and all of Snyder County.

(10) The Tenth District is composed of all of Bradford County; part of Clinton County consisting of the City of Lock Haven and the Townships of Allison, Bald Eagle, Castanea, Chapman, Colebrook, Crawford, Dunnstable, East Keating, Gallagher, Greene, Grugan, Leidy, Logan, Noyes, Pine Creek, Wayne and Woodward and the Boroughs of Avis, Flemington, Loganton, Mill Hall, Renovo and South Renovo; all of Lycoming County; all of Monroe County; part of Northumberland County consisting of the Townships of Delaware, Lewis, Turbot and West Chillisquaque and the Boroughs of McEwensville, Milton, Turbotville and Watsontown; all of Pike County; all of Potter County; all of Sullivan County; all of Susquehanna County; all of Tioga County; all of Union County; all of Wayne County; and all of Wyoming County.

(11) The Eleventh District is composed of part of Carbon County consisting of the Townships of Banks, Franklin, Kidder, Lausanne, Lehigh, Packer and Penn Forest and the Boroughs of Beaver Meadows, East Side, Jim Thorpe, Lehighton, Nesquehoning and Weatherly; all of Columbia County; all of Lackawanna County; all of Luzerne County; and all of Montour County.

(12) The Twelfth District is composed of part of Armstrong County consisting of the Townships of Bethel, Burrell, Cadogan, Gilpin, Kiskiminetas, Kittanning, Manor, North Buffalo, Parks, South Bend and South Buffalo and the Boroughs of Apollo, Ford City, Ford Cliff, Freeport, Leechburg, Manorville and North Apollo; all of Cambria County; part of Fayette County consisting of the City of Connellsville and the Townships of Connellsville, Dunbar, Georges, Henry Clay, North Union, Springfield, Stewart and Wharton and the Boroughs of Dunbar, Fairchance, Markleysburg, Ohiopyle, Smithfield, South Connellsville and Vanderbilt; all of Indiana County; all of Somerset County; and part of Westmoreland County consisting of the Cities of Latrobe, Lower Burrell and New Kensington Wards 2, 3, 4 (Division 5), 5, 6 and 7 and the Townships of Allegheny, Bell, Cook, Derry, Donegal, East Huntingdon, Fairfield, Ligonier, Loyalhanna, Mount Pleasant, North Huntingdon Wards 1 (Divisions 2 and 4), 2 (Divisions 1 and 2), 4, 5, 6 and 7, Penn, Salem, St. Clair, Unity, Upper Burrell and Washington and the Boroughs of Avonmore, Bolivar, Delmont, Derry, Donegal, East Vandergrift, Export, Hyde Park, Irwin, Laurel Mountain, Ligonier, Mount Pleasant, Murrysville, New Alexandria, New Florence, North Irwin, Oklahoma, Scottdale, Seward, Trafford (Westmoreland County portion), Vandergrift, West Leechburg and Youngstown.

(13) The Thirteenth District is composed of part of Montgomery County consisting of the Townships of Abington, Cheltenham, East Norriton, Hatfield, Horsham, Lower Gwynedd, Lower Merion, Lower Moreland, Lower Providence, Lower Salford District 6, Montgomery, Plymouth, Skippack, Springfield, Towamencin, Upper Dublin, Upper Gwynedd, Upper Merion, Upper Moreland, Upper Providence, West Norriton, Whitemarsh, Whitpain and Worcester and the Boroughs of Ambler, Bridgeport, Bryn Athyn, Collegeville, Conshohocken, Hatboro, Hatfield, Jenkintown, Lansdale, Narberth, Norristown, North Wales, Rockledge, Royersford, Trappe and West Conshohocken; and part of Philadelphia County consisting of the City of Philadelphia Wards 9 and 63.

(14) The Fourteenth District is composed of part of Allegheny County consisting of the Townships of Aleppo, Baldwin, Collier, Crescent, East Deer, Fawn, Findlay, Frazer, Hampton, Harmar, Harrison, Indiana, Kennedy, Kilbuck, Leet, Marshall, McCandless, Moon, Mount Lebanon, Neville, North Fayette, O'Hara, Ohio, Pine, Reserve, Richland, Robinson, Ross, Scott, Shaler, South Fayette, South Park, Springdale, Stowe, Upper St. Clair and West Deer and the Boroughs of Aspinwall, Avalon, Baldwin, Bell Acres, Bellevue, Ben Avon, Ben Avon Heights, Bethel Park, Blawnox, Brackenridge, Bradford Woods, Brentwood, Bridgeville, Carnegie, Castle Shannon, Cheswick, Coraopolis, Crafton, Dormont, Edgeworth, Emsworth, Etna, Fox Chapel, Franklin Park, Glenfield, Green Tree, Haysville, Heidelberg, Ingram, Leetsdale, McDonald (Allegheny County portion), McKees Rocks, Millvale, Oakdale, Oakmont, Osborne, Pennsbury Village, Pleasant Hills Districts 1, 3, 4, 6, 7 and 9, Plum, Rosslyn Farms, Sewickley, Sewickley Heights, Sewickley Hills, Sharpsburg, Springdale, Tarentum, Thornburg, Verona, West View and Whitehall; and part of Westmoreland County consisting of the Cities of Arnold and New Kensington Ward 4 (Divisions 1, 2, 3 and 4).

(15) The Fifteenth District is composed of part of Bucks County consisting of the Townships of Bedminster, Durham, East Rockhill, Haycock, Milford, Nockamixon, Plumstead Districts 2, 3 and 4, Richland and Springfield and the Boroughs of Perkasie Districts 1 and 2, Quakertown, Richlandtown, Riegelsville and Trumbauersville; all of Lehigh County; and all of Northampton County.

(16) The Sixteenth District is composed of part of Chester County consisting of the City of Coatesville and the Townships of Birmingham, Caln, Charlestown, East Bradford, East Brandywine, East Caln, East Fallowfield, East Goshen, East Marlborough, East Nantmeal, East Nottingham, East Whiteland, Elk, Franklin Highland, Honey Brook, Kennett, London Britain, London Grove, Londonderry, Lower Oxford, New Garden, New London, Newlin, Penn, Pennsbury, Pocopson, Sadsbury, Thornbury, Upper Oxford, Upper Uwchlan, Uwchlan, Valley, Wallace, Warwick, West Bradford, West Brandywine, West Caln, West Fallowfield, West Goshen, West Marlborough, West Nantmeal, West Nottingham, West Pikeland, West Sadsbury, West Vincent, West Whiteland, Westtown and Willistown and the Boroughs of Atglen, Avondale, Downingtown, Elverson, Honey Brook, Kennett Square, Malvern, Modena, Oxford, Parkesburg, South Coatesville, West Chester and West Grove; part of Delaware County consisting of the City of Chester and the Townships of Aston, Bethel, Chadds Ford, Chester, Concord, Lower Chichester, Middletown, Nether Providence, Ridley Wards 1, 2 (Division 2), 3, 4 (Division 1), 5 (Division 2), 6, 7, 8 (Division 2) and 9 and Upper Chichester and the Boroughs of Brookhaven, Chester Heights, Eddystone, Marcus Hook, Media, Parkside, Ridley Park, Rose Valley, Trainer and Upland; and part of Lancaster County consisting of the Townships of Bart, Caernarvon, Colerain, Conestoga, Drumore, Earl, East Drumore, East Earl, East Lampeter District 3, Eden, Fulton, Leacock, Little Britain, Manor, Martic, Paradise, Pequea, Providence, Sadsbury, Salisbury, Strasburg and West Lampeter District Lampeter and the Boroughs of Christiana, New Holland, Quarryville, Strasburg and Terre Hill.

(17) The Seventeenth District is composed of part of Cumberland County consisting of the Townships of East Pennsboro, Hampden Precincts 2, 3, 4, 5, 7, 8, 9, 10, 11 and 12, Lower Allen and Upper Allen and the Boroughs of Camp Hill, Lemoyne, New Cumberland, Shiremanstown and Wormleysburg; all of Dauphin County; part of Lancaster County consisting of the Townships of Brecknock, Clay, Conoy, East Cocalico, East Donegal, Elizabeth, Ephrata, Manheim Districts 1, 2, 13, 14 and 16, Mount Joy, Penn, Rapho, Upper Leacock, Warwick, West Cocalico, West Donegal and West Earl and the Boroughs of Adamstown (Lancaster County portion), Akron, Denver, Elizabethtown, Ephrata, Lititz, Manheim, Marietta and Mount Joy; and all of Lebanon County.

(18) The Eighteenth District is composed of part of Allegheny County consisting of the Cities of Clairton, Duquesne, McKeesport and Pittsburgh and the Townships of Elizabeth, Forward, North Versailles, Penn Hills, South Versailles and Wilkins and the Boroughs of Braddock, Braddock Hills, Chalfant, Churchill, Dravosburg, East McKeesport, East Pittsburgh, Edgewood, Elizabeth, Forest Hills, Glassport, Homestead, Jefferson Hills, Liberty, Lincoln, Monroeville, Mount Oliver, Munhall, North Braddock, Pitcairn, Pleasant Hills Districts 2, 5, 8 and 10, Port Vue, Rankin, Swissvale, Trafford (Allegheny County portion), Turtle Creek, Versailles, Wall, West Elizabeth, West Homestead, West Mifflin, Whitaker, White Oak, Wilkinsburg and Wilmerding.

(19) The Nineteenth District is composed of all of Adams County; part of Lancaster County consisting of the City of Lancaster and the Townships of East Hempfield, East Lampeter Districts 1 and 2, Lancaster, Manheim Districts 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 17, 18 and 19, West Hempfield and West Lampeter Districts Lakes, Locust, Lyndon, Millport and Willow St. and the Boroughs of Columbia, East Petersburg, Millersville and Mountville; and all of York County.

Section 2. First election.

(a) General rule.—The first election under this act shall be held at the primary election in the year 2002.

(b) Current officeholders.—The members of Congress now in office shall continue in the office until the expiration of their respective terms.

(c) Vacancies.—Vacancies now existing or happening after the passage of this act and before the commencement of the terms of the members elected at the election of 2002 shall be filled for the unexpired terms from the districts formerly prescribed by law.

Section 3. Missed political subdivision.

In the event any political subdivision or part thereof should be omitted in the description of the congressional districts, the political subdivision or part thereof shall be included as a part of the congressional district which completely surrounds it. Should any omitted political subdivision or part thereof be not completely surrounded by one congressional district, it shall become a part of that congressional district to which it is contiguous, or if there are two or more such contiguous districts, it shall become a part of that congressional district contiguous thereto which has the least population.

Amend Sec. 1, page 1, line 6, by striking out "1" and inserting: 4

Amend Sec. 1, page 1, line 7, by striking out "a statute" and inserting: this act

Amend Sec. 1, page 1, line 8, by striking out "Congressional" and inserting: congressional

Amend Sec. 1, page 1, line 11, by striking out "Congressional" and inserting: congressional

Amend Sec. 1, page 1, line 11, by striking out "by the statute"

Amend Sec. 6, page 1, line 14, by striking out "2" and inserting: 5

Amend Sec. 2, page 1, line 16, by inserting after "all": congressional

Amend Sec. 2, page 1, line 16, by striking out "by the statute"

Amend Sec. 2, page 1, line 16, by inserting after "the" where it appears the second time: congressional

Amend Sec. 2, page 1, line 18, by inserting after "the" where it appears the second time: congressional

Amend Sec. 2, page 2, line 3, by striking out "Congressional and inserting: congressional

Amend Bill, page 2, by inserting between lines 3 and 4:

Section 6. Repeals.

All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Amend Sec. 3, page 2, line 4, by striking out "3" and inserting: 7

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Berks, Senator O'Pake.

Senator O'PAKE. Mr. President, this is the Senate Democratic proposed reapportionment plan. As you can see from this beautiful map, our plan is compact, contiguous, represents communities of interest, minimal displacement, and minimal deviation.

Now, I could go over all 19 districts, but basically what we do, since Pennsylvania is going to lose two congressional seats, we have configured a plan that says that one of the losses will be as a result of two Democrats running against one another, therefore only one will win, and the other loss will be a Republican running against a Democrat in a plan that basically favors the Republican. So, the suffering, if you will, of Pennsylvania losing two seats will be equally shared by the two political parties.

The Senate Democratic plan provides for a minimal disruption of representation. There will be very little moving of population from one district to the other. It gives every non-retiring incumbent a district, except for the combination of the Borski-Greenwood district in northeast Philadelphia and lower Berks County. The Senate Democratic plan gives each suburban Philadelphia Congressman a district, where the largest segment of that district is their home county, such as Congressman Hoeffel, who will continue to be able to represent Montgomery County as Montgomery County's only Congressman.

The Senate Democratic plan keeps two minority-majority seats within the Philadelphia area. The Senate Democratic plan, in this amendment, provides for the 6th District to stay intact, essentially the way it has been for the last 40 years, Berks and Schuylkill County. It keeps the 11th District essentially intact, combining Luzerne and Lackawanna Counties, and it also keeps essentially intact Congressman Murtha's district in southwestern Pennsylvania.

I can, as I said, go over each of the districts, if you would like. The 1st and 2nd Districts would be minority-majority African-American districts in Philadelphia now represented by Congressman Brady and Congressman Fattah. The 3rd District, which is the old 20th, would be carved for Congressman Mascara, with a major addition of Beaver County and some losses of Westmoreland and some of Allegheny. The 4th District, the old 21st District, which would be Congressman English's district, adding a little bit of Lawrence County. The 5th District would be the Peterson district, an almost entirely rural district, that adds some territory from Clearfield, Armstrong, and Butler Counties. The 6th District, as I said, would the Berks-Schuylkill district that Congressman Holden now represents. The 7th District is basically Congressman Weldon's district based in Delaware County, with portions of Chester, Montgomery, and Bucks. The 8th District is the Greenwood combination seat, with 61 percent of the district being in Bucks and the other 30 percent in northeast Philadelphia. The 9th would be the Shuster district, basically the same as it is now, with the addition of some territory in Cumberland and the loss of some territory in Clearfield. The 10th District would be basically the Sherwood district, a rural-based district, but would include all of Monroe County. The 11th District would be the Kanjorski district, placing the entire Wyoming Valley into one district with a combination of Luzerne and Lackawanna Counties. The 12th District, the Murtha district, would lose some territory in Armstrong and gain some territory in Westmoreland. The 13th District, which is the Montgomery County seat, will continue to have the seat now occupied by

Congressman Hoeffel, and two wards from the city of Philadelphia would be added, in the 9th and the 63rd. The 14th District would be the Melissa Hart district, basically the old District 20 combined with the Allegheny County portion of the old 4th District, along with North Hills, and would lose some territory in Beaver, Butler, Lawrence, and Westmoreland. The only incumbent Congressman who lives in that district is Congressman Hart. The 15th District would be essentially the Lehigh Valley seat now held by Congressman Toomey, with portions of Upper Bucks County added to the Lehigh-Northampton County district. The 16th District, which would be the Pitts district, the seat based in Chester County, with portions of Delaware County added with some portions of Lancaster County. The 17th District, which would be the Gekas district, is the same district, basically with the loss of Perry County, minimal displacement. The 18th District, Congressman Doyle, unites the city of Pittsburgh with a Mon Valley portion and the East Hill portions of Allegheny County. And, finally, the 19th District here in central Pennsylvania, which Congressman Platts now represents, loses territory in Cumberland County and adds territory in Lancaster County.

As you can see, it is truly a bipartisan approach which preserves every present Congressman, except pits two in the southwest and two in the southeast, and the four of them would vie for two seats and probably would split one-and-one. We respectfully submit this and ask for its approval.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Would the gentleman from Berks stand for interrogation?

Senator O'PAKE. Mr. President, I will.

Senator BRIGHTBILL. Mr. President, is the gentleman aware of the deviation that exists with the map that he presented?

Senator O'PAKE. Mr. President, I am told that the maximum deviation is 146. That is total, of course.

Senator BRIGHTBILL. Mr. President, when the gentleman says total, that is usually expressed in deviation above and a deviation below. What would that be?

Senator O'PAKE. Mr. President, I am told that the absolute range would be from 87 below to 59 above.

Senator BRIGHTBILL. Mr. President, now would the gentleman indicate in District 1 of his amendment what the total African-American population would be?

Senator O'PAKE. Mr. President, 49.25 percent.

Senator BRIGHTBILL. Mr. President, would the gentleman indicate what the District 1 African-American voting age population would be?

Senator O'PAKE. Mr. President, 45.57 percent. Of course, the Hispanic is 6.79 percent, and the over-18 voting age population Hispanic is 5.64 percent.

Senator BRIGHTBILL. Mr. President, would it be fair to say then that District 1, which is currently a minority-majority African-American district, becomes a minority-majority district under your plan?

Senator O'PAKE. Mr. President, it does because of the addition of the African-American and Hispanic.

Senator BRIGHTBILL. Mr. President, what is the African-American population in District 2?

Senator O'PAKE. Mr. President, total or over 18?

Senator BRIGHTBILL. Total, Mr. President.

Senator O'PAKE. Mr. President, the total is 52.88 percent.

Senator BRIGHTBILL. Mr. President, what is the voting age population?

Senator O'PAKE. Mr. President, 49.77 percent, but there again, the Hispanic is 11.30 percent, and over 18 is 9.47 percent, making it a minority-majority district.

Senator BRIGHTBILL. Mr. President, both districts are currently majority African-American districts, is that correct, 1 and 2?

Senator O'PAKE. Mr. President, that is correct.

Senator BRIGHTBILL. Mr. President, so that neither District 1 nor District 2 would continue as a majority African-American district under your plan?

Senator O'PAKE. Mr. President, it would continue as a minority-majority district when you combine the African-American and the Hispanic population.

Senator BRIGHTBILL. Mr. President, that is correct, but would the gentleman indicate that neither district is a majority African-American district under his proposal?

Senator O'PAKE. Mr. President, I think what the court looks at is how the minorities, African-American and Hispanic, vote. And the voting pattern in Philadelphia in those two districts is that they vote similarly and therefore can combine the African-American and the Hispanic population, creating a valid minority-majority district in both of those two districts.

Senator BRIGHTBILL. Mr. President, would the gentleman indicate if that is a question of fact and not a rule of law?

Senator O'PAKE. Well, Mr. President, it is what the court has been looking at when it has made determinations on appeals.

Senator BRIGHTBILL. Mr. President, now, Senator Mellow, in discussing the plan that we proposed, indicated opinions as to who would win what district. This combination of Representative Borski and Representative Greenwood into the 8th District, would it be fair to say that that district, as constructed in your plan, would easily be won by Representative Borski?

Senator O'PAKE. No, Mr. President, not at all. According to our figures, 61 percent of the district would be in Bucks County, and only 39 percent would be in the city of Philadelphia. That clearly would favor Congressman Greenwood.

Senator BRIGHTBILL. Mr. President, what is the registration, Republican and Democrat, for District 8?

Senator O'PAKE. Mr. President, according to our staff, the registered Democratic vote would be 48.4 percent, and Republican 41 percent, with 10.6 percent other.

Senator BRIGHTBILL. Mr. President, so that would be 48 to 41, Democrat over Republican, and that would indicate that under normal and standard analysis that the Democrat would win that election?

Senator O'PAKE. Mr. President, those figures are just voter registrations. I think what is far more relevant is the voting patterns.

Senator BRIGHTBILL. Mr. President, would the gentleman indicate what the voting pattern is, reflecting the election he is referencing?

Senator O'PAKE. Mr. President, again, I am told that the voting patterns favor the Republicans 48.13 percent to 45.33 percent Democrat.

Senator BRIGHTBILL. Mr. President, what legislation is the gentleman referencing?

Senator O'PAKE. Mr. President, my staff says we would be happy to share that. I think it is a combination of recent elections, including presidential and some other important races.

Senator BRIGHTBILL. Mr. President, so that would be Mark McKillop's secret formula, would that be fair to say?

Senator O'PAKE. No, Mr. President, that is not fair.

Senator BRIGHTBILL. Mr. President, I thank the gentleman, and I have no other questions.

Senator O'PAKE. Mr. President, the gentleman is welcome.

And the question recurring,
Will the Senate agree to the amendment?

The yeas and nays were required by Senator O'PAKE and were as follows, viz:

YEA-22

Bodack	Kitchen	O'Pake	White, Donald
Boscola	Kukovich	Schwartz	Williams, Anthony H.
Costa	LaValle	Stack	Williams, Constance
Fumo	Logan	Stout	Wozniak
Hughes	Mellow	Tartaglione	
Kasunic	Musto	Wagner	

NAY-27

Armstrong	Gerlach	Mowery	Scarnati
Brightbill	Greenleaf	Murphy	Thompson
Conti	Helfrick	Orie	Tomlinson
Corman	Holl	Piccola	Waugh
Dent	Jubelirer	Punt	Wenger
Earll	Lemmond	Rhoades	White, Mary Jo
Erickson	Madigan	Robbins	

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

Without objection, the bill, as amended, was passed over in its order at the request of Senator BRIGHTBILL.

SPECIAL ORDER OF BUSINESS SUPPLEMENTAL CALENDAR No. 3

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 1200 (Pr. No. 1612) — The Senate proceeded to consideration of the bill, entitled:

An Act to apportion the Commonwealth of Pennsylvania into congressional districts in conformity with constitutional requirements; providing for the nomination and election of Congressmen; and requiring publication of notice of the establishment of congressional districts following the Federal decennial census.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-27

Armstrong	Gerlach	Mowery	Scarnati
Brightbill	Greenleaf	Murphy	Thompson
Conti	Helfrick	Orie	Tomlinson
Corman	Holl	Piccola	Waugh
Dent	Jubelirer	Punt	Wenger
Earll	Lemmond	Rhoades	White, Mary Jo
Erickson	Madigan	Robbins	

NAY-22

Bodack	Kitchen	O'Pake	White, Donald
Boscola	Kukovich	Schwartz	Williams, Anthony H.
Costa	LaValle	Stack	Williams, Constance
Fumo	Logan	Stout	Wozniak
Hughes	Mellow	Tartaglione	
Kasunic	Musto	Wagner	

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, at this time I ask for a brief recess of the Senate for the purpose of a meeting of the Committee on Rules and Executive Nominations.

The PRESIDENT. Senator Brightbill requests a recess of the Senate for the purpose of a meeting of the Committee on Rules and Executive Nominations immediately in the Rules room to the rear of the Senate Chamber. For that purpose, without objection, the Senate will stand in recess.

AFTER RECESS

The PRESIDENT. The time of recess having expired, the Senate will come to order.

REPORT FROM COMMITTEE

Senator BRIGHTBILL, from the Committee on Rules and Executive Nominations, reported the following bill:

HB 1405 (Pr. No. 3045) (Amended) (Rereported)

An Act amending the act of August 9, 1955 (P.L.323, No.130), known as The County Code, further providing for classification of counties, for expenses of elected county officers attending the annual meetings of their associations, for other meeting expenses paid by the counties, for reports and for preparation and filing of proposed budget; and making editorial changes.

REPORT FROM COMMITTEE ON RULES AND EXECUTIVE NOMINATIONS

Senator ROBBINS, from the Committee on Rules and Executive Nominations, reported the following nominations made by His Excellency, the Governor of the Commonwealth, which were read by the Clerk as follows:

MEMBER OF THE STATE BOARD OF BARBER EXAMINERS

November 14, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Vincent Iacono, 2030 South Queen Street, York 17403, York County, Twenty-eighth Senatorial District, for appointment as a member of the State Board of Barber Examiners, to serve for a term of three years and until his successor is appointed and qualified, but not longer than six months beyond that period, vice Richard Sciorillo, Philadelphia, whose term expired.

Mark S. Schweiker
Governor

MEMBER OF THE PENNSYLVANIA CANCER CONTROL, PREVENTION AND RESEARCH ADVISORY BOARD

November 8, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Melissa K. Kratz, RN, MSN, AOCN, 1345 Nace Road, Pennsburg 18073, Bucks County, Tenth Senatorial District, for appointment as a member of the Pennsylvania Cancer Control, Prevention and Research Advisory Board, to serve for a term of four years and until her successor is appointed and qualified, vice Karen Robinson, Allegheny, whose term expired.

Mark S. Schweiker
Governor

MEMBER OF THE COUNCIL OF TRUSTEES OF CHEYNEY UNIVERSITY OF PENNSYLVANIA OF THE STATE SYSTEM OF HIGHER EDUCATION

November 21, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Robert L. Traynham, II, 713 Yeadon Avenue, Yeadon 19050, Delaware County, Eighth Senatorial District, for appointment as a member of the Council of Trustees of Cheyney University of Pennsylvania of the State System of Higher Education, to serve until the third Tuesday of January 2007 and until his successor is appointed and qualified, vice Marc D. Kramer, Downingtown, whose term expired.

Mark S. Schweiker
Governor

MEMBER OF THE PENNSYLVANIA DRUG, DEVICE AND COSMETIC BOARD

November 14, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Andrew J. Behnke, M.D., 3415 Ridgewood Drive, Hermitage 16148, Mercer County, Fiftieth Senatorial District, for appointment as a member of the Pennsylvania Drug, Device and Cosmetic Board, to serve for a term of four years or until his successor is appointed and qualified, but not longer than six months beyond that period, vice Lauren P. Argenio, D.O., West Pittston, whose term expired.

Mark S. Schweiker
Governor

MEMBER OF THE HEALTH POLICY BOARD

November 8, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Paul H. Boehringer, M.B.A., 1017 Gypsy Hill Road, Lower Gwynedd 19002, Montgomery County, Twelfth Senatorial District, for appointment as a member of the Health Policy Board, to serve for a term of three years and until his successor is appointed and qualified, vice Thomas McLoughlin, Erie, resigned.

Mark S. Schweiker
Governor

MEMBER OF THE HEALTH POLICY BOARD

November 8, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Joseph G. Mraz, 121 Silver Drive, Elizabethtown 17022, Lancaster County, Thirty-sixth Senatorial District, for appointment as a member of the Health Policy Board, to serve for a term of three years and until his successor is appointed and qualified, vice Charles W. Pruitt, Jr., deceased.

Mark S. Schweiker
Governor

COMMONWEALTH TRUSTEE OF LINCOLN UNIVERSITY OF THE COMMONWEALTH SYSTEM OF HIGHER EDUCATION

October 9, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Craig Lincoln Tucker, 304 East Marshall Street, Apartment #812, West Chester, 19380, Chester County,

Nineteenth Senatorial District, for appointment as a Commonwealth Trustee of Lincoln University of Pennsylvania of the Commonwealth System of Higher Education, to serve until August 31, 2003, and until his successor is appointed and qualified, vice William A. Robinson, Harrisburg, resigned.

Mark S. Schweiker
Governor

MEMBER OF THE STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

October 5, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Melanie A. Wennick, 6507 Chambersburg Road, Fayetteville 17222, Franklin County, Thirty-third Senatorial District, for reappointment as a member of the State Board of Occupational Therapy Education and Licensure, to serve for a term of three years and until her successor is appointed and qualified, but not longer than six months beyond that period.

THOMAS J. RIDGE
Governor

NOMINATIONS LAID ON THE TABLE

Senator ROBBINS. Mr. President, I request that the nominations just read by the Clerk be laid on the table.

The PRESIDENT. The nominations will be laid on the table.

COMMUNICATIONS FROM THE GOVERNOR REPORTED FROM COMMITTEE ON RULES AND EXECUTIVE NOMINATIONS

Senator ROBBINS, from the Committee on Rules and Executive Nominations, by unanimous consent, reported communications from His Excellency, the Governor of the Commonwealth, recalling the following nominations, which were read by the Clerk as follows:

MEMBER OF THE PENNSYLVANIA COUNCIL ON AGING

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 29, 2001 for the appointment of Stephanie Moore, 40 Red Barberry Drive, Etters 17319, York County, Thirty-first Senatorial District, as a member of the Pennsylvania Council on Aging, to serve until October 8, 2002, and until her successor is appointed and qualified, vice Audrey Reichblum, Pittsburgh, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE STATE BOARD OF BARBER EXAMINERS

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Elisabeth Baker, (Public Member), P.O. Box 59, Mt. View Drive, Lehman 18627, Luzerne County, Twentieth Senatorial District, as a member of the State Board of Barber Examiners, to serve for a term of three years and until her successor is appointed and qualified, but not longer than six months beyond that period, vice Lois K. Herr, Manheim, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE STATE CIVIL SERVICE COMMISSION

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated July 23, 2001 for the appointment of Donna Kriner, 6320 Darlington Drive, Harrisburg 17112, Dauphin County, Fifteenth Senatorial District, as a member of the State Civil Service Commission, to serve until April 9, 2006 or until her successor is appointed and qualified, but not longer than six months beyond that period, vice Norma J. Gotwalt, Camp Hill, whose term expired.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

CONTROLLER, LUZERNE COUNTY

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 29, 2001 for the appointment of Elisabeth Baker, P.O. Box 59, Mt. View Drive, Lehman 18627, Luzerne County, Twentieth Senatorial District, as Controller, in and for the County of Luzerne, to serve until the first Monday of January 2002, vice Thomas P. Pizzano, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE PENNSYLVANIA DRUG, DEVICE AND COSMETIC BOARD

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 29, 2001 for the appointment of Jennifer L. Hoover, 41 Evergreen Street, Shavertown 18708, Luzerne County, Twentieth Senatorial District, as a member of the Pennsylvania Drug, Device and Cosmetic Board, to serve for a term of four years or until her successor is appointed and qualified, but not longer than six months beyond that period, vice Lawrence R. Soma, V.M.D., Glen Mills, whose term expired.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE PENNSYLVANIA ENERGY DEVELOPMENT AUTHORITY

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Michelle M. Grove, 220 Umberto Street, New Cumberland 17070, Cumberland County, Thirty-first Senatorial District, as a member of the Pennsylvania Energy Development Authority, to serve for a term of four years and until her successor is appointed and qualified, vice James J. Canova, East McKeesport, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE PENNSYLVANIA FISH AND BOAT COMMISSION

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 29, 2001 for the appointment of Fritz Bittenbender (District 8), 4400 Colonial Road, Dover 17315, York County, Twenty-eighth Senatorial District, as a member of the Pennsylvania Fish and Boat Commission, to serve for a term of eight years or until his successor is appointed and qualified, but not longer than six months beyond that period, vice Donald N. Lacy, Reading, whose term expired.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE BOARD OF TRUSTEES OF HARRISBURG STATE HOSPITAL

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Donna Kriner, 6320 Darlington Drive, Harrisburg 17112, Dauphin County, Fifteenth Senatorial District, as a member of the Board of Trustees of Harrisburg State Hospital, to serve until the third Tuesday of January 2007 and until her successor is appointed and qualified, vice Blake Maria Yohe, York, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE BOARD OF TRUSTEES OF HARRISBURG STATE HOSPITAL

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Stephanie Moore, 40 Red Barberry Drive, Etters 17319, York County, Thirty-first Senatorial District, as a member of the Board of Trustees of Harrisburg State Hospital, to serve until the third Tuesday of January 2007, and until her successor is appointed and qualified, vice Albert E. Myers, Harrisburg, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE PENNSYLVANIA HUMAN RELATIONS COMMISSION

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Fritz Bittenbender, 4400 Colonial Road, Dover 17315, York County, Twenty-eighth Senatorial District, as a member of the Pennsylvania Human Relations Commission, to serve until February 21, 2005 or until his successor is appointed and qualified, vice Robert Johnson-Smith, Elkins Park, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE STATE BOARD OF PODIATRY

December 10, 200

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 29, 2001 for the appointment of Mark Navarro, (Public Member), 4184 Kittatinny Drive, Mechanicsburg 17055, Cumberland County, Thirty-first Senatorial District, as a member of the State Board of Podiatry, to serve for a term of four years or until his successor is appointed and qualified, but not longer than six months beyond that period, vice Michael A. Cibik, Philadelphia, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE POLK CENTER BOARD OF TRUSTEES

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Valerie Smith, 7723 Farmdale Avenue, Harrisburg 17112, Dauphin County, Fifteenth Senatorial District, as a member of the Polk Center Board of Trustees, to serve until the third Tuesday of January 2007, and until her successor is appointed and qualified, vice Alvin G. Kessler, Oil City, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Valerie Smith, 7723 Farmdale Avenue, Harrisburg 17112, Dauphin County, Fifteenth Senatorial District, as a member of the Professional Standards and Practices Commission, to serve until the third Tuesday of January 2002, and until her successor is appointed and qualified, vice Susan Genesi, Philipsburg, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

PROTHONOTARY, ALLEGHENY COUNTY

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated July 30, 2001 for the appointment of Fritz Bittenbender, 4400 Colonial Road, Dover 17315, York County, Twenty-eighth Senatorial District, as Prothonotary, in and for the county of Allegheny, to serve until the first Monday of January 2002, vice The Honorable Michael F. Coyne, deceased.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

PROTHONOTARY, CLERK OF COURTS, JEFFERSON COUNTY

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 29, 2001 for the appointment of Donna Kriner, 6320 Darlington Drive, Harrisburg 17112, Dauphin County, Fifteenth Senatorial District, as Prothonotary, Clerk of Courts, in and for the County of Jefferson, to serve until the first Monday of January 2002, vice Kae Ploucha, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

PROTHONOTARY, CLERK OF COURTS, MIFFLIN COUNTY

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 29, 2001 for the appointment of Fritz Bittenbender, 4400 Colonial Road, Dover 17315, York County, Twenty-eighth Senatorial District, as Prothonotary and Clerk of Courts, in and for the County of Mifflin, to serve until the first of Monday of January 2002, vice Sue Ellen Saxton, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE STATE BOARD OF PSYCHOLOGY

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Michelle M. Grove (Public Member) 220 Umberto Street, New Cumberland 17070, Cumberland County, Thirty-first Senatorial District, as a member of the State Board of Psychology, to serve until November 10, 2002 or until her successor is appointed and qualified, but not longer than six months beyond that period, vice Anthony J. Fubio, Altoona, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE PENNSYLVANIA PUBLIC TELEVISION NETWORK COMMISSION

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Valerie Smith, 7723 Farmdale Avenue, Harrisburg 17112, Dauphin County, Fifteenth Senatorial District, as a member of the Pennsylvania Public Television Network Commission, to serve for a term of six years or until her successor is appointed and qualified, but not longer than six months beyond that period, vice Joseph F. Leeson, Jr., Esquire, Bethlehem, whose term expired.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

REGISTER OF WILLS, RECORDER OF DEEDS, CLERK OF ORPHANS' COURT, NORTHUMBERLAND COUNTY

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 6, 2001 for the appointment of Fritz Bittenbender, 4400 Colonial Road, Dover 17315, York County, Twenty-Eighth Senatorial District, as Register of Wills, Recorder of Deeds, Clerk of Orphans' Court, in and for the County of Northumberland, to serve until the first Monday of January 2002, vice Frederick F. Reed, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 20, 2001 for the appointment of Wha Lee, (Public Member), 2292 Albern Boulevard, Lancaster 17601, Lancaster County, Thirty-sixth Senatorial District, as a member of the State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, to serve for a term of four years and until her successor is appointed and qualified, but not longer than six months beyond that period, vice Dennis P. McManus, Pittsburgh, whose term expired.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE BOARD OF TRUSTEES OF TORRANCE STATE HOSPITAL

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated September 12, 2001 for the appointment of Jennifer Hoover, 41 Evergreen Street, Shavertown 18708, Luzerne County, Twentieth Senatorial District, as a member of the Board of Trustees of Torrance State Hospital, to serve until the third Tuesday of January 2003, and until her successor is appointed and qualified, vice Velma C. Noonan, Carnegie, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE BOARD OF TRUSTEES OF WERNERSVILLE STATE HOSPITAL

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated July 23, 2001 for the appointment of Stephanie Moore, 40 Red Barberry Drive, Etters 17319, York County, Thirty-first Senatorial District, as a member of the Board of Trustees of Wernersville State Hospital, to serve until the third Tuesday of January 2005, and until her successor is appointed and qualified, vice Pattee J. Miller, Reading, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE BOARD OF TRUSTEES OF WERNERSVILLE STATE HOSPITAL

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 29, 2001 for the appointment of Annette Steele, 2025 Bonita Court, Harrisburg 17110, Dauphin County, Fifteenth Senatorial District, as a member of the Board of Trustees of Wernersville State Hospital, to serve until the third Tuesday of January 2007, and until her successor is appointed and qualified, vice Warren W. Lamm, Sinking Spring, deceased.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE SNYDER COUNTY BOARD OF ASSISTANCE

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated September 25, 2001for the appointment of Jaime Gibson, 10 B West Beale Avenue, Enola 17025, Cumberland County, Thirty-first Senatorial District, as a member of the Snyder County Board of Assistance, to serve until December 31, 2003, and until her successor is appointed and qualified, vice Judy A. Jones, Selinsgrove, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE VENANGO COUNTY BOARD OF ASSISTANCE

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated September 12, 2001 for the appointment of Elizabeth Schehr, 65 Suffolk Road, Harrisburg 17112, Dauphin County, Fifteenth Senatorial District, as a member of the Venango County Board of Assistance, to serve until December 31, 2001, and until her successor is appointed and qualified, vice Creeta Y. Owens, Oil City, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE WARREN COUNTY BOARD OF ASSISTANCE

December 10, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated September 12, 2001 for the appointment of Barbara Kauffman, 3182 Cornerstone Drive, Lancaster 17603, Lancaster County, Thirteenth Senatorial District, as a member of the Warren County Board of Assistance, to serve until December 31, 2003, and until her successor is appointed and qualified, vice Wanda C. Little, North Warren, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

NOMINATIONS RETURNED TO THE GOVERNOR

Senator ROBBINS. Mr. President, I move that the nominations just read by the Clerk be returned to His Excellency, the Governor.

A voice vote having been taken, the question was determined in the affirmative.

The PRESIDENT. The nominations will be returned to the Governor.

SECOND CONSIDERATION CONTINUED

BILL REREPORTED FROM COMMITTEE ON SECOND CONSIDERATION

Senator BRIGHTBILL. Mr. President, I call up House Bill No. 1405, Printer's No. 3045, which was previously reported from committee, and move that the Senate agree to the bill on second consideration.

On the question,

Will the Senate agree to the motion?

A voice vote having been taken, the question was determined in the affirmative.

Ordered to be printed on the Calendar for third consideration.

ANNOUNCEMENTS BY THE SECRETARY

The following announcements were read by the Secretary of the Senate:

SENATE OF PENNSYLVANIA

COMMITTEE MEETINGS

TUESDAY, DECEMBER 11, 2001

9:00 A.M.	EDUCATION (public hearing on cyber charter schools)	Room 8E-A East Wing
9:00 A.M.	FINANCE (to consider Senate Bills No. 315 and 1223; and House Bills No. 1360 and 1363)	Majority Caucus Rm.
10:00 A.M.	LAW AND JUSTICE (to consider Senate Resolution No. 59)	Room 8E-B East Wing
10:45 A.M.	APPROPRIATIONS (to consider Senate Bills No. 955, 1007 and 1240; and House Bills No. 3, 27 and 1944)	Rules Cmte. Conf. Rm.
11:00 A.M.	JUDICIARY (to consider Senate Bills No. 1048 and 1244; and House Bills No. 227 and 344)	Room 8E-B East Wing
11:15 A.M.	RULES AND EXECUTIVE NOMINATIONS (to consider Senate Bills No. 216, 607, 696, 837 and 907; House Bill No. 1633; and certain executive nominations)	Rules Cmte. Conf. Rm.

WEDNESDAY, DECEMBER 12, 2001

10:00 A.M.	TRANSPORTATION (to consider Senate Bills No. 457, 1225 and 1249; and House Bill No. 1758)	Room 461 Main Capitol

ADJOURNMENT

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, I move that the Senate do now adjourn until Tuesday, December 11, 2001, at 11:30 a.m., Eastern Standard Time.

The motion was agreed to by voice vote.

The Senate adjourned at 11:59 p.m., Eastern Standard Time.

COMMONWEALTH OF PENNSYLVANIA }
} ss. CERTIFICATION
COUNTY OF DAUPHIN }

Ted Mazia, being duly sworn, deposes and says:

1. I am the Chief Clerk of the House of Representatives of the Commonwealth of Pennsylvania.

2. In the normal course of my duties and pursuant to Rule 69 of the Rules of the House of Representatives, I am responsible for keeping the Journal of the proceedings of the House, which is printed and made available to members and the public.

3. The Journal of the House is the official record of all statements and debates taking place while the House is in session.

4. Personnel under my supervision in the normal course of business, compiled and printed the attached Journal dated December 12, 2001.

5. I certify that the attached Journal transcript of December 12, 2001, is a true, complete, and correct record of the statements made during the proceedings of the House.

Ted Mazia
TED MAZIA

Sworn to and subscribed before me
this 20th day of February 2002.

NOTARY

Notarial Seal
Denise A. Johnson, Notary Public
Harrisburg, Dauphin County
My Commission Expires Mar. 6, 2004
Member, Pennsylvania Association of Notaries

DEFENDANT'S EXHIBIT S

COMMONWEALTH OF PENNSYLVANIA

LEGISLATIVE JOURNAL

WEDNESDAY, DECEMBER 12, 2001

SESSION OF 2001 185TH OF THE GENERAL ASSEMBLY No. 72

HOUSE OF REPRESENTATIVES

* * *

The House proceeded to third consideration of **SB 1200, PN 1612**, entitled:

An Act to apportion the Commonwealth of Pennsylvania into congressional districts in conformity with constitutional requirements; providing for the nomination and election of Congressmen; and requiring publication of notice of the establishment of congressional districts following the Federal decennial census.

On the question,
Will the House agree to the bill on third consideration?

Mr. **PERZEL** offered the following amendment No. **A4858**:

Amend Sec. 1, page 1, lines 15 through 19; pages 2 through 21, lines 1 through 30; page 21, lines 1 through 7, by striking out all of said lines on said pages and inserting

(1) The First District is composed of part of Delaware County consisting of the City of Chester and the Townships of Chester, Darby Wards 1 and 2, Ridley Ward 1 (Division 2) and Tinicum Wards 1, 2 and 4 and the Boroughs of Colwyn, Darby, Eddystone and Yeadon; and part of Philadelphia County consisting of the City of Philadelphia Wards 1, 2, 3, 4, 5, 7, 10 (Divisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29), 14, 17, 18, 19, 20, 23, 25, 26 (Divisions 2 and 23), 31, 33, 34, 37, 39, 40, 42, 43, 49 (Divisions 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 21, 22 and 23), 50 (Division 23), 53 (Divisions 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22 and 23), 54, 56 (Divisions 1 and 15) and 62 (Divisions 7, 10, 11 and 14).

(2) The Second District is composed of part of Montgomery County consisting of the Township of Cheltenham, and part of Philadelphia County consisting of the City of Philadelphia Wards 6, 8, 9, 10 (Division 13), 11, 12, 13, 15, 16, 21, 22, 24, 26 (Divisions 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 24), 27, 28, 29, 30, 32, 35 (Divisions 1, 13, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30 and 31), 36, 38, 44, 46, 47, 48, 49 (Divisions 7, 8, 18, 20, 24 and 25), 50 (Divisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29 and 30), 51, 52, 59, 60 and 61.

(3) The Third District is composed of part of Berks County consisting of the Townships of Amity, Brecknock, Caernarvon, Colebrookdale, Cumru Districts 2, 3 and 5, District, Douglass, Earl, Exeter Districts 2, 3 and 6, Heidelberg, Hereford, Longswamp, Lower Heidelberg District 1, Maxatawny, Oley, Pike, Robeson, Rockland, Ruscombmanor, South Heidelberg, Spring, Union and Washington and the Boroughs of Adamstown, Bally, Bechtelsville, Birdsboro, Boyertown, Kutztown, Lyons, Mohnton, New Morgan, Robesonia, Shillington, Sinking Spring, St. Lawrence, Topton, Wernersville, West Lawn, Womelsdorf, Wyomissing and Wyomissing Hills; part of Chester County consisting of the City of Coatesville and the Townships of Caln, Charlestown, East Bradford District North, East Brandywine, East Caln, East Coventry, East Nantmeal, East Pikeland, East Vincent, East Whiteland (all blocks except 3014, 3023 and 3024 of tract 302102), Honey Brook, North Coventry, Pocopson, Sadsbury, Schuylkill, South Coventry, Upper Uwchlan, Uwchlan, Valley, Wallace, Warwick, West Bradford, West Brandywine, West Caln, West Nantmeal, West Pikeland, West Sadsbury, West Vincent and West Whiteland and the Boroughs of Atglen, Downingtown, Elverson, Honey Brook, Modena, Phoenixville, South Coatesville and Spring City; part of Lebanon County consisting of the Townships of Heidelberg, Jackson District East and Millcreek and the Boroughs of Myerstown and Richland; and part of Montgomery County consisting of the Townships of Douglass, East Norriton, Limerick, Lower Merion, Perkiomen, Plymouth, Skippack, Upper Gwynedd District 7, Upper Pottsgrove, Upper Providence Districts Mingo and Trappe, West Norriton, West Pottsgrove, Whitemarsh Districts Middle (Divisions 2 and 3) and West (Divisions 1 and 2) and Worcester and the Boroughs o Collegeville, Narberth, Norristown, Pottstown, Royersford, Schwenksville and Trappe.

(4) The Fourth District is composed of part of Allegheny County consisting of the Townships of Aleppo, Baldwin, Collier, Crescent, East Deer, Fawn, Findlay, Frazer, Hampton, Harmar, Harrison, Indiana, Kilbuck, Leet, Marshall, McCandless, Moon, Mount Lebanon, North Fayette, O'Hara, Ohio, Pine, Richland, Ross, Scott, Shaler Wards 1 (Divisions 1, 2, 3 and 5), 2, 3, 4, 5, 6 and 7, South Fayette, Upper St. Clair and West Deer and the Boroughs of Baldwin Districts 5, 6, 7, 8, 9, 10, 11, 14, 17 and 18, Bell Acres, Ben Avon, Ben Avon Heights, Bethel Park, Brackenridge, Bradford Woods, Bridgeville, Carnegie, Cheswick, Edgeworth, Fox Chapel, Franklin Park, Green Tree, Haysville, Heidelberg, Leetsdale, McDonald (Allegheny County portion), Monroeville Wards 2 (Division 3), 3 (Division 4) and 4 (Divisions 1 and 2), Oakdale, Oakmont, Osborne, Pleasant Hills, Plum, Sewickley, Sewickley Heights, Sewickley Hills, Springdale, Tarentum, West View and Whitehall Districts 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14 and 16; part of Beaver County consisting of the Townships of Daugherty, Franklin, Marion, New Sewickley and North Sewickley Districts 1, 2, 3 and 5 and the Borough of Economy; part of Lawrence County consisting of the Townships of Hickory, Neshannock, Perry, Plain Grove, Scott, Slippery Rock, Washington and Wilmington and the Boroughs of New Wilmington and Volant; part of Washington County consisting of the Townships of Amwell District 1, Cecil District 6, North Strabane Districts 1, 2, 4, 5 and 6, Nottingham, Peters and South Strabane; and part of Westmoreland County consisting of the Townships of North Huntingdon and Penn Wards 2, 3 (Division 3), 4 (al. Divisions except 2) and 5 and the Boroughs of Irwin, Manor, Murrysville District South Murrysville, North Irwin and Trafford (Westmoreland County portion).

(5) The Fifth District is composed of part of Armstrong County consisting of the Borough of South Bethlehem; part of Butler County consisting of the Township of Allegheny; part of Cambria County consisting of the Township of Reade District North; all of Cameron County; all of Centre County; all of Clarion County; part of Clearfield County consisting of the City of Dubois and the Townships of Beccaria, Bell, Bigler, Bloom, Boggs, Bradford, Brady, Burnside, Cooper, Covington, Decatur, Ferguson, Girard, Goshen, Graham, Greenwood, Gulich, Huston, Jordan, Karthaus, Knox, Lawrence, Morris, Penn, Pike, Pine, Sandy Precincts Falls Creek (Division 1), Oklahoma, Sabula, Treasure Lake and West Sandy, Union and Woodward and the Boroughs of Brisbin, Burnside, Chester Hill, Clearfield, Coalport, Curwensville, Glen Hope, Grampian, Houtzdale, Irvona, Lumber City, Mahaffey, New Washington, Newburg, Osceola Mills, Ramey, Troutville and Wallaceton; all of Clinton County; part of Crawford County consisting of the City of Titusville and the Townships of Oil Creek and Rome and the Borough of Hydetown; all of Elk County; all of Forest County; part of Huntingdon County consisting of the Townships of Barree, Brady, Jackson and West; part of Indiana County consisting of the Townships of Banks, Canoe, East Mahoning, Grant, Montgomery, North Mahoning, South Mahoning and West Mahoning and the Boroughs of Cherry Tree, Glen Campbell, Marion Center, Plumville and Smicksburg; all of Jefferson County; part of Lycoming County consisting of the Townships of Armstrong, Bastress, Brady, Brown, Cummings, Limestone, McHenry, Nippenose, Piatt, Porter, Susquehanna, Washington and Woodward and the Boroughs of Duboistown, Jersey Shore and South Williamsport; all of McKean County; part of Mifflin County consisting of the Townships of Brown, Menno and Union; all of Potter County; all of Tioga County; all of Venango County; and part of Warren County consisting of the City of Warren and the Townships of Cherry Grove, Conewango, Deerfield, Eldred, Elk, Farmington, Glade, Limestone, Mead, Pine Grove, Pleasant, Sheffield, Southwest, Triumph and Watson and the Boroughs of Clarendon and Tidioute.

(6) The Sixth District is composed of part of Berks County consisting of the City of Reading and the Townships of Albany, Alsace, Bern, Bethel, Centre, Cumru Districts 1, 4 and 6, Exeter Districts 1, 4, 5 and 7, Greenwich, Jefferson, Lower Alsace, Lower Heidelberg District 2, Maidencreek, Marion, Muhlenberg, North Heidelberg, Ontelaunee, Penn, Perry, Richmond, Tilden, Tulpehocken, Upper Bern, Upper Tulpehocken and Windsor and the Boroughs of Bernville, Centerport, Fleetwood, Hamburg, Kenhorst, Laureldale, Leesport, Lenhartsville, Mount Penn, Shoemakersville, Strausstown and West Reading; all of Carbon County; part of Lackawanna County consisting of the City of Scranton Wards 2 (Division 6), 4 (Divisions 1, 2, 3, 4, 6 and 7), 5, 6, 7, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21 (Division 1), 22 and 24 and the Boroughs of Dunmore, Moosic and Taylor; part of Luzerne County consisting of the Cities of Hazleton, Nanticoke Wards 2, 3, 5, 6, 7, 8, 9, 10, 11, 12 and 13, Pittston and Wilkes-Barre and the Townships of Butler, Dorrance, Hanover Wards 2, 3, 5 (Division 3), 6 and 7 (Division 1), Hazle Districts 1 - Jeddo, 2 - Milnesville, 5 - Jeanesville, 6 - Pardeesville, 7 - Stockton, 8 - Lattimer, 10 and 11 - Harleigh, Jenkins, Newport, Pittston, Plains, Slocum and Wilkes-Barre and the Boroughs of Ashley, Avoca, Dupont, Duryea, Hughestown, Jeddo, Laflin, Laurel Run, Sugar Notch, Warrior Run, West Hazleton Wards 1, 2 (Division 2) and 3 and Yatesville; and all of Schuylkill County.

(7) The Seventh District is composed of part of Chester County consisting of the Townships of East Goshen, Easttown, East Whiteland (only blocks 3014, 3023 and 3024 of tract 302102), Thornbury, Tredyffrin, West Goshen, Westtown and Willistown and the Borough of Malvern; part of Delaware County consisting of the Townships of Aston, Bethel, Chadds Ford, Concord, Darby Wards 3, 4 and 5, Edgmont, Haverford, Lower Chichester, Marple, Middletown, Nether Providence, Newtown, Radnor, Ridley Wards 1 (Divisions 1 and 3), 2, 3, 4, 5, 6, 7, 8 and 9, Springfield, Thornbury, Tinicum Wards 3 and 5, Upper Chichester, Upper Darby and Upper Providence and the Boroughs of Aldan, Brookhaven, Chester Heights, Clifton Heights, Collingdale, East Lansdowne, Folcroft, Glenolden, Lansdowne, Marcus Hook, Media, Millbourne, Morton, Norwood, Parkside, Prospect Park, Ridley Park, Rose Valley, Rutledge, Sharon Hill, Swarthmore, Trainer and Upland; and part of Montgomery County consisting of the Townships of Lower Providence, Upper Merion and Upper Providence Districts Mont Clare and Oaks and the Boroughs of Bridgeport, Conshohocken and West Conshohocken.

(8) The Eighth District is composed of all of Bucks County; and part of Philadelphia County consisting of the City of Philadelphia Wards 58 (Divisions 4, 6, 7, 11, 16, 19, 20, 21, 22, 24, 28, 29, 39 and 41) and 66 (Divisions 3, 6, 7, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 29, 30, 31, 33, 34, 35, 36, 38, 39, 40, 42, 43, 44, 45 and 46).

(9) The Ninth District is composed of all of Bedford County; all of Blair County; part of Clearfield County consisting of the Township of Sandy Precinct Falls Creek (Division 2); part of Cumberland County consisting of the Townships of Cooke, Dickinson, Hopewell, Lower Frankford, Lower Mifflin, Middlesex Precinct 1, North Middleton Precincts 1 and 2, North Newton, Penn, South Newton, Southampton Precincts Lower and Upper (Division 1), Upper Frankford, Upper Mifflin and West Pennsboro and the Boroughs of Newburg and Newville; part of Fayette County consisting of the Cities of Connellsville and Uniontown and the Townships of Bullskin, Connellsville, Dunbar Districts 1, 3 and 4, Henry Clay, North Union, Saltlick Districts 1 and 2, South Union, Springfield, Stewart and Wharton and the Boroughs of Dunbar, Markleysburg, Ohiopyle and South Connellsville; all of Franklin County; all of Fulton County; part of Huntingdon County consisting of the Townships of Carbon, Cass, Clay, Cromwell, Dublin, Franklin, Henderson, Hopewell, Juniata, Lincoln, Logan, Miller, Morris, Oneida, Penn, Porter, Shirley, Smithfield, Springfield, Spruce Creek, Tell, Todd, Union, Walker, Warriors Mark and Wood and the Boroughs of Alexandria, Birmingham, Broad Top City, Cassville, Coalmont, Dudley, Huntingdon, Mapleton, Marklesburg, Mill Creek, Mount Union, Orbisonia, Petersburg, Rockhill, Saltillo, Shade Gap, Shirleysburg and Three Springs; all of Juniata County; part of Mifflin County consisting of the Townships of Armagh, Bratton, Decatur, Derry, Granville, Oliver and Wayne and the Boroughs of Burnham, Juniata Terrace, Kistler, Lewistown, McVeytown and Newton Hamilton; all of Perry County; part of Somerset County consisting of the Townships of Addison, Allegheny, Black, Brothersvalley, Elk Lick, Fairhope, Greenville, Jefferson, Jenner, Larimer, Lincoln, Lower Turkeyfoot, Middlecreek, Milford, Northampton, Somerset, Southampton, Stonycreek, Summit and Upper Turkeyfoot and the Boroughs of Addison, Berlin, Boswell, Callimont, Casselman, Confluence, Garrett, Indian Lake, Jennerstown, Meyersdale, New Baltimore, New Centerville, Rockwood, Salisbury, Seven Springs, Shanksville, Somerset, Ursina and Wellersburg; and part of Westmoreland County consisting of the Township of Donegal District Indian Creek.

(10) The Tenth District is composed of all of Bradford County; part of Lackawanna County consisting of the Cities of Carbondale and Scranton Wards 1, 2 (Divisions 1, 2, 3, 4 and 5), 3, 4 (Division 5), 13, 21 (Divisions 2, 3, 4 and 5) and 23 and the Townships of Abington, Benton, Carbondale, Clifton, Covington, Elmhurst, Fell, Glenburn, Greenfield, Jefferson, La Plume, Madison, Newton, North Abington, Ransom, Roaring Brook, Scott, South Abington, Spring Brook, Thornhurst and West Abington and the Boroughs of Archbald, Blakely, Clarks Green, Clarks Summit, Dalton, Dickson City, Jermyn, Jessup, Mayfield, Moscow, Old Forge, Olyphant, Throop and

Vandling; part of Luzerne County consisting of the Townships of Bear Creek, Buck, Dallas, Dennison, Exeter, Fairview, Foster, Franklin, Kingston, Lehman District Northeast, Rice and Wright and the Boroughs of Bear Creek Village, Dallas, Exeter, Forty Fort, Freeland, Nuangola, Penn Lake Park, Swoyersville Wards 1 (Division 1) and 2 (Division 2), West Pittston, West Wyoming, White Haven and Wyoming; part of Lycoming County consisting of the City of Williamsport and the Townships of Anthony, Cascade, Clinton, Cogan House, Eldred, Fairfield, Franklin, Gamble, Hepburn, Jackson, Jordan, Lewis, Loyalsock, Lycoming, McIntyre, McNett, Mifflin, Mill Creek, Moreland, Muncy, Muncy Creek, Old Lycoming, Penn, Pine, Plunketts Creek, Shrewsbury, Upper Fairfield, Watson and Wolf and the Boroughs of Hughesville, Montgomery, Montoursville, Muncy, Picture Rocks and Salladasburg; part of Monroe County consisting of the Townships of Barrett, Chestnuthill District 1, Coolbaugh, Eldred, Middle Smithfield, Paradise, Pocono, Polk, Price, Smithfield, Stroud, Tobyhanna and Tunkhannock and the Boroughs of Delaware Water Gap, East Stroudsburg, Mount Pocono and Stroudsburg; all of Pike County; all of Sullivan County; all of Susquehanna County; all of Wayne County; and all of Wyoming County.

(11) The Eleventh District is composed of part of Armstrong County consisting of the Townships of Boggs, Bradys Bend, Cadogan, East Franklin, Hovey, Kittanning, Madison, Mahoning, North Buffalo, Perry, Pine, Rayburn, Redbank, South Buffalo, Sugarcreek, Valley, Washington, Wayne and West Franklin and the Boroughs of Applewold, Dayton, Kittanning, Parker City, West Kittanning and Worthington; part of Butler County consisting of the City of Butler and the Townships of Adams, Brady, Buffalo, Butler, Center, Cherry, Clay, Clearfield, Clinton, Concord, Connoquenessing, Cranberry, Donegal, Fairview, Forward, Franklin, Jackson, Jefferson, Lancaster, Marion, Mercer, Middlesex, Muddy Creek, Oakland, Parker, Penn, Slippery Rock, Summit, Venango, Washington, Winfield and Worth and the Boroughs of Bruin, Callery, Cherry Valley, Chicora, Connoquenessing, East Butler, Eau Claire, Evans City, Fairview, Harmony, Harrisville, Karns City, Mars, Petrolia, Portersville, Prospect, Saxonburg, Seven Fields, Slippery Rock, Valencia, West Liberty, West Sunbury and Zelienople; part of Crawford County consisting of the City of Meadville and the Townships of Athens, Beaver, Bloomfield, Cambridge, Conneaut, Cussewago, East Fairfield, East Fallowfield, East Mead, Fairfield, Greenwood, Hayfield, North Shenango, Pine, Randolph, Richmond, Rockdale, Sadsbury, South Shenango, Sparta, Spring, Steuben, Summerhill, Summit, Troy, Union, Venango, Vernon, Wayne, West Fallowfield, West Mead, West Shenango and Woodcock and the Boroughs of Blooming Valley, Cambridge Springs, Centerville, Cochranton, Conneaut Lake, Conneautville, Linesville, Saegertown, Spartansburg, Springboro, Townville, Venango and Woodcock; all of Erie County; part of Mercer County consisting of the Townships of Coolspring, Deer Creek, Delaware, East Lackawannock, Fairview, Findley, French Creek, Greene, Hempfield, Jackson, Jefferson, Lackawannock, Lake, Liberty, Mill Creek, New Vernon, Otter Creek, Perry, Pine, Salem, Sandy Creek, Sandy Lake, Springfield, Sugar Grove, West Salem, Wilmington, Wolf Creek and Worth and the Boroughs of Fredonia, Greenville, Grove City, Jackson Center, Jamestown, Mercer, New Lebanon, Sandy Lake, Sheakleyville and Stoneboro; and part of Warren County consisting of the Townships of Brokenstraw, Columbus, Freehold, Pittsfield, Spring Creek and Sugar Grove and the Boroughs of Bear Lake, Sugar Grove and Youngsville.

(12) The Twelfth District is composed of part of Allegheny County consisting of the Township of Springdale; part of Armstrong County consisting of the Townships of Bethel, Burrell, Cowanshannock, Gilpin, Kiskiminetas, Manor, Parks, Plumcreek and South Bend and the Boroughs of Apollo, Atwood, Elderton, Ford City, Ford Cliff, Freeport, Leechburg, Manorville, North Apollo and Rural Valley; part of Cambria County consisting of the City of Johnstown and the Townships of Adams, Allegheny Barr, Blacklick, Cambria, Chest, Clearfield, Conemaugh, Cresson, Croyle, Dean, East Carroll, East Taylor, Elder, Gallitzin, Jackson, Lower Yoder, Middle Taylor, Munster, Portage, Reade District South, Richland, Stonycreek, Summerhill, Susquehanna, Upper Yoder, Washington, West Carroll, West Taylor and White and the Boroughs of Ashville, Brownstown, Carrolltown, Cassandra, Chest Springs, Cresson, Daisytown, Dale, East Conemaugh, Ebensburg, Ehrenfeld, Ferndale, Franklin, Gallitzin, Geistown, Hastings, Lilly, Lorain, Loretto, Nanty Glo, Northern Cambria, Patton, Portage, Sankertown, Scalp Level, South Fork, Southmont, Summerhill, Tunnelhill (Cambria County portion), Vintondale, Westmont and Wilmore; part of Clearfield County consisting of the Township of Chest and the Borough of Westover; part of Fayette County consisting of the Townships of Brownsville, Dunbar District 2, Franklin, German District 3, Jefferson, Lower Tyrone, Luzerne District 5, Menallen, Perry, Redstone, Saltlick District 3, Upper Tyrone and Washington and the Boroughs of Belle Vernon, Dawson, Everson, Fayette City, Newell, Perryopolis and Vanderbilt; part of Indiana County consisting of the Townships of Armstrong, Black Lick, Brush Valley, Buffington, Burrell, Center, Cherryhill, Conemaugh, East Wheatfield, Green, Pine, Rayne, Washington, West Wheatfield, White and Young and the Boroughs of Armagh, Blairsville, Clymer, Creekside, Ernest, Homer City, Indiana, Saltsburg and Shelocta; part of Somerset County consisting of the Townships of Conemaugh, Ogle, Paint, Quemahoning and Shade and the Boroughs of Benson, Central City, Hooversville, Paint, Stoystown and Windber; and part of Westmoreland County consisting of the Cities of Arnold, Greensburg, Jeannette, Latrobe, Lower Burrell, Monessen and New Kensington and the Townships of Allegheny, Bell, Cook, Derry, Donegal District Four Mile Run, East Huntingdon, Fairfield, Hempfield, Ligonier, Loyalhanna, Mount Pleasant, Penn Wards 1, 3 (all Divisions except 3) and 4 (Division 2), Rostraver, Salem, Sewickley, South Huntingdon, St. Clair, Unity, Upper Burrell and Washington and the Boroughs of Adamsburg, Arona, Avonmore, Bolivar, Delmont, Derry, Donegal, East Vandergrift, Export, Hunker, Hyde Park, Laurel Mountain, Ligonier, Madison, Mount Pleasant, Murrysville Districts East Manordale, East Murrysville, Manordale, Newlonsburg, Sardis and West Murrysville, New Alexandria, New Florence, New Stanton, North Belle Vernon, Oklahoma, Penn, Scottdale, Seward, Smithton, South Greensburg, Southwest Greensburg, Sutersville, Vandergrift, West Leechburg, West Newton, Youngstown and Youngwood.

(13) The Thirteenth District is composed of part of Montgomery County consisting of the Townships of Abington, Hatfield, Horsham, Lower Frederick, Lower Gwynedd, Lower Moreland, Lower Pottsgrove, Lower Salford, Marlborough (only block 2999 of tract 207600), Montgomery, New Hanover, Springfield, Towamencin, Upper Dublin, Upper Frederick, Upper Gwynedd Districts 1, 2, 3, 4, 5 and 6, Upper Hanover District 2, Upper Moreland, Upper Salford, Whitemarsh Districts East, Middle (Divisions 1, 4 and 5) and West (Division 3) and Whitpain and the Boroughs of Ambler, Bryn Athyn, Green Lane (only blocks 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015, 3022 and 3997 of tract 207600), Hatboro, Hatfield, Jenkintown, Lansdale, North Wales and Rockledge; and part of Philadelphia County consisting of the City of Philadelphia Wards 35 (Divisions 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 25 and 32), 41, 45, 53 (Divisions 5, 20 and 21), 55, 56 (Divisions 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41), 57, 58 (Divisions 1, 2, 3, 5, 8, 9, 10, 12, 13, 14, 15, 17, 18,

23, 25, 26, 27, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 42, 43 and 44), 62 (Divisions 1, 2, 3, 4, 5, 6, 8, 9, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26), 63, 64, 65 and 66 (Divisions 1, 2, 4, 5, 8, 12, 26, 28, 32, 37 and 41).

(14) The Fourteenth District is composed of part of Allegheny County consisting of the Cities of McKeesport and Pittsburgh and the Townships of Kennedy, Neville, North Versailles Wards 1, 2, 3 (Division 1), 4, 5, 6 and 7, Penn Hills, Reserve, Robinson, Shaler Ward 1 (Division 4), Stowe and Wilkins and the Boroughs of Aspinwall, Avalon, Baldwin Districts 1, 2, 3, 4, 12, 13, 15 and 16, Bellevue, Blawnox, Braddock, Braddock Hills, Brentwood, Castle Shannon, Chalfant, Churchill, Coraopolis, Crafton, Dormont, East McKeesport, East Pittsburgh, Edgewood, Emsworth, Etna, Forest Hills, Glenfield, Homestead, Ingram, McKees Rocks, Millvale, Mount Oliver, Munhall, North Braddock, Pennsbury Village, Rankin, Rosslyn Farms, Sharpsburg, Swissvale, Thornburg, Turtle Creek, Verona, Wall, West Homestead, Whitehall Districts 7 and 15, Wilkinsburg and Wilmerding.

(15) The Fifteenth District is composed of all of Lehigh County; part of Monroe County consisting of the Townships of Chestnuthill Districts 2, 3 and 4, Hamilton, Jackson and Ross; part of Montgomery County consisting of the Townships of Franconia, Marlborough (all blocks except 2999 of tract 207600), Salford and Upper Hanover Districts 1 and 3 and the Boroughs of East Greenville, Green Lane (all blocks except 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015, 3022 and 3997 of tract 207600), Pennsburg, Red Hill, Souderton and Telford (Montgomery County portion); and all of Northampton County.

(16) The Sixteenth District is composed of part of Chester County consisting of the Townships of Birmingham, East Bradford District South, East Fallowfield, East Marlborough, East Nottingham, Elk, Franklin, Highland, Kennett, London Britain, London Grove, Londonderry, Lower Oxford, New Garden, New London, Newlin, Penn, Pennsbury, Upper Oxford, West Fallowfield, West Marlborough and West Nottingham and the Boroughs of Avondale, Kennett Square, Oxford, Parkesburg, West Chester and West Grove; all of Lancaster County; and part of Lebanon County consisting of the City of Lebanon and the Townships of North Cornwall, North Lebanon, South Lebanon, West Cornwall and West Lebanon and the Boroughs of Cleona and Cornwall.

(17) The Seventeenth District is composed of all of Columbia County; all of Dauphin County; part of Lebanon County consisting of the Townships of Annville, Bethel, Cold Spring, East Hanover, Jackson District West, North Annville, North Londonderry, South Annville, South Londonderry, Swatara and Union and the Boroughs of Jonestown, Mount Gretna and Palmyra; part of Luzerne County consisting of the City of Nanticoke Wards 1 and 4 and the Townships of Black Creek, Conyngham, Fairmount, Hanover Wards 1, 4, 5 (Divisions 1 and 2) and 7 (Divisions 2 and 3), Hazle Districts 3 - West Hazleton, 4 - Beaverbrook and 9 - Cranberry, Hollenback, Hunlock, Huntington, Jackson, Lake, Lehman Districts Middle and Southwest, Nescopeck, Plymouth, Ross, Salem, Sugarloaf and Union and the Boroughs of Conyngham, Courtdale, Edwardsville, Harveys Lake, Kingston, Larksville, Luzerne, Nescopeck, New Columbus, Plymouth, Pringle, Shickshinny, Swoyersville Wards 1 (Division 2), 2 (Division 1) and 3 and West Hazleton Ward 2 (Division 1); all of Montour County; all of Northumberland County; all of Snyder County; and all of Union County.

(18) The Eighteenth District is composed of part of Allegheny County consisting of the Cities of Clairton and Duquesne and the Townships of Elizabeth, Forward, North Versailles Ward 3 (Division 2), South Park and South Versailles and the Boroughs of Dravosburg, Elizabeth, Glassport, Jefferson Hills, Liberty, Lincoln, Monroeville Wards 1, 2 (Divisions 1 and 2), 3 (Divisions 1, 2 and 3), 4 (Division 3), 5, 6 and 7, Pitcairn, Port Vue, Trafford (Allegheny County portion), Versailles, West Elizabeth, West Mifflin, Whitaker and White Oak; part of Beaver County consisting of the Cities of Aliquippa and Beaver Falls and the Townships of Brighton, Center, Chippewa, Darlington, Greene, Hanover, Harmony, Hopewell, Independence, North Sewickley District 4 Ellwood City Boro, Patterson, Potter, Pulaski, Raccoon, Rochester, South Beaver, Vanport and White and the Boroughs of Ambridge, Baden, Beaver, Big Beaver, Bridgewater, Conway, Darlington, East Rochester, Eastvale, Fallston, Frankfort Springs, Freedom, Georgetown, Glasgow, Homewood, Hookstown, Industry, Koppel, Midland, Monaca, New Brighton, New Galilee, Ohioville, Patterson Heights, Rochester, Shippingport, South Heights and West Mayfield; part of Fayette County consisting of the Townships of Georges, German Districts 1, 2, 4, 5, 6 and 7, Luzerne Districts 1, 2, 3, 4 and 6, Nicholson and Springhill and the Boroughs of Brownsville, Fairchance, Masontown, Point Marion and Smithfield; all of Greene County; part of Lawrence County consisting of the City of New Castle and the Townships of Little Beaver, Mahoning, North Beaver, Pulaski, Shenango, Taylor, Union and Wayne and the Boroughs of Bessemer, Ellport, Ellwood City (Lawrence County portion), Enon Valley, New Beaver, S.N.P.J., South New Castle and Wampum; part of Mercer County consisting of the Cities of Farrell, Hermitage and Sharon and the Townships of Pymatuning, Shenango and South Pymatuning and the Boroughs of Clark, Sharpsville, West Middlesex and Wheatland; and part of Washington County consisting of the Cities of Monongahela and Washington and the Townships of Amwell District 2, Blaine, Buffalo, Canton, Carroll, Cecil Districts 1, 2, 3, 4 and 5, Chartiers, Cross Creek, Donegal, East Bethlehem, East Finley, Fallowfield, Hanover, Hopewell, Independence, Jefferson, Morris, Mount Pleasant, North Bethlehem, North Franklin, North Strabane District 3, Robinson, Smith, Somerset, South Franklin, Union, West Bethlehem, West Finley and West Pike Run and the Boroughs of Allenport, Beallsville, Bentleyville, Burgettstown, California, Canonsburg, Centerville, Charleroi, Claysville, Coal Center, Cokeburg, Deemston, Donora, Dunlevy, East Washington, Elco, Ellsworth, Finleyville, Green Hills, Houston, Long Branch, Marianna, McDonald, Midway, New Eagle, North Charleroi, Roscoe, Speers, Stockdale, Twilight, West Alexander, West Brownsville and West Middletown.

(19) The Nineteenth District is composed of all of Adams County; part of Cumberland County consisting of the Townships of East Pennsboro, Hampden, Lower Allen, Middlesex Precinct 2, Monroe, North Middleton Precinct 3, Shippensburg, Silver Spring, South Middleton, Southampton District Upper (Division 2) and Upper Allen and the Boroughs of Camp Hill, Carlisle, Lemoyne, Mechanicsburg, Mount Holly Springs, New Cumberland, Shippensburg (Cumberland County portion), Shiremanstown and Wormleysburg; and all of York County.

On the question,
Will the House agree to the amendment?

The SPEAKER. On the question of the adoption of the Perzel amendment, the Chair recognizes the Democratic floor leader, Mr. DeWeese. Will the gentleman yield.

Members, please take your seats. Sergeants at Arms, keep the area behind the rail cleared.

Mr. DeWeese.

Mr. DeWEESE. Thank you, Mr. Speaker.

By way of explanation to our caucus, earlier in the afternoon we had been under the impression that there might be changes and alterations in the maps that were caucused upon yesterday.

This has not been the case. Therefore, when the majority leader inquired as to whether it would be appropriate to proceed with this bill and the amendment, I indicated in the affirmative because we have caucused at length, over 2 hours yesterday, on this exact same effort.

I think that the Perzel amendment is a significant step in the right direction, but it gives me pause in a couple of areas: one, political fairness. The Democrats in Pennsylvania number about 3.7 million, and the Republicans in Pennsylvania number approximately 3.2 million. There are between 400,000 and 500,000 more Democrats than Republicans in the State. We lost population compared to the rest of the Union in the last 10 years, and the inexorable result of that outmigration of population is a loss of two seats. In Plato's Republic we would lose one seat and the majority party, the Republican Party, would lose one seat. As the gentleman from Oakmont realizes, this is not Plato's Republic. This is roll-up-your-sleeves, hardball politics, and the Perzel amendment would eliminate two Democratic seats, one in the east and one in the west.

Now, the brass-knuckles phenomenon of the loss of two seats is eminently more alluring than what happened last night. The unpalatable obscenity vomited forth by the Republican Senate is at least palliated by Mr. Perzel's amendment. Last night's alternative would be the elimination of four Democratic congressional seats, notwithstanding the fact that there are about a half a million more Democrats in Pennsylvania than there are Republicans.

The second reason, other than political fairness, would be community fairness. We had a plan, Mr. Speaker, that I think supersedes the Perzel amendment, and that plan would keep Montgomery County whole. Montgomery County is the largest Republican county in Pennsylvania. It is becoming more politically independent, politically independent, as time rolls on, but almost since the beginning of time Montgomery County has had its own congressional seat. Montgomery County, Pennsylvania, that big, bustling suburb around Philadelphia, has 750,000 people. You only need a little over 600,000 for a congressional seat. They should have a congressional seat, and the honorable majority leader's amendment does not include Montgomery County's whole congressional seat.

The Lackawanna County-Luzerne County area is also being treated in a comparatively cavalier fashion, Mr. Speaker. Luzerne County forms the basis of a congressional district. Its population comprises almost 1 1/2 congressional districts. It has always remained a whole congressional preserve, and Mr. Perzel's effort counters Luzerne County being one congressional seat. In fact, it is fractured almost unrecognizably into three different congressional seats.

Mr. Speaker, may I have some order, please?

The SPEAKER. Members, please. The conference by the majority leader's desk; the conferences along the wall.

Mr. DeWEESE. Thank you, Mr. Speaker.

The SPEAKER. Will the gentleman yield.

Conferences, please cease.

Mr. DeWeese.

Mr. DeWEESE. The city of Scranton is also rendered less able to participate in its congressional elections in the future because it is split down the heart. So in Montgomery County, Luzerne County, in the city of Scranton, our option to the gentleman, Mr. Perzel, I think is much more attractive.

And the third and final reason that I am somewhat tentative on the gentleman's amendment compared to the one that we had offered is the seniority in the United States congressiona' establishment that Representative Murtha, Representative Kanjorski, Representative Borski project. The Perzel amendment is preferable to the Senate paperwork by a mile, but it still falls short in protecting the decades of public service that have accumulated on the part of some of our Democratic congressional colleagues.

I think that the more egalitarian vote would be for a vote that the Democrats are wishing to offer, Mr. Speaker, and I would like to call for a suspension of the rules in order to offer that amendment – at the appropriate time.

The SPEAKER. Well, is this the appropriate time?

Mr. DeWEESE. With all due respect, sir, you wield the gavel.

The SPEAKER. At the moment – thank you for reminding me of that – at the moment we are on the Perzel amendment. I will recognize you at the conclusion of the debate on the Perzel amendment.

Do you have anything further on that amendment?

Mr. DeWEESE. On the Perzel amendment?

The SPEAKER. Yes.

Mr. Blaum.

I am sorry; I did not mean to cut you off. Have you completed debate on the Perzel amendment?

Mr. DeWEESE. I have completed the initial phase, the dominant phase; yes, sir.

The SPEAKER. All right.

Mr. Blaum, on the Perzel amendment.

Mr. BLAUM. Thank you, Mr. Speaker.

At this time, Mr. Speaker, I would like to speak on the Perzel amendment, but in anticipation of the Democratic leader's amendment, I would wait until that point in time.

Could we suspend for just one second?

The SPEAKER. The House is at ease for a moment.

Mr. Blaum, as I understand the minority leader, when the Perzel amendment is disposed of, he is going to move to suspend the rules to offer his own amendment. You will not be permitted to speak on the question of suspension of the rules—

Mr. BLAUM. I will speak now.

The SPEAKER. —unless the gentleman yields to you.

Mr. BLAUM. I will speak now.

The SPEAKER. The gentleman is recognized.

Mr. BLAUM. Thank you, Mr. Speaker.

Mr. Speaker, as was just pointed out by the Speaker and the Democratic leader, an amendment will be offered in the near future, a motion to suspend the rules to offer an amendment which I believe will present a plan much fairer to the people of Pennsylvania, but in anticipation of that – and that is not before us now – what is before us now is the Perzel amendment, and we need to talk about this amendment before us now.

Mr. Speaker, the bill, this Senate bill that came over from the Senate, while there are many, many problems with it, is devastating to northeastern Pennsylvania. The Perzel amendment does not make any changes to improve the situation in northeastern Pennsylvania, Mr. Speaker, but it does continue this process. It does amend this bill to send it back to the Senate and does not end the process and put into effect the devastating plan which came over from the Senate.

For that reason, Mr. Speaker, I will be voting for the Perzel amendment, even though it does not make improvements, simply to prolong this process so that hopefully cooler heads will prevail and we will adopt a congressional reapportionment plan for northeastern Pennsylvania that serves the people.

Mr. Speaker, we are fully aware that the number of Congressmen in this State needs to decline from 21 to 19. We are political realists, Mr. Speaker, and we understand that the current Congressman from the 11th Congressional District centered in the Wilkes-Barre area needs to face off with the current Congressman from the Sixth Legislative District centered in the Reading area. That is fair, Mr. Speaker, and we have accepted that fact over the last 6 to 7 months. But that is not what came out of the Senate of Pennsylvania. Because of the efforts of Congressman Sherwood from the 10th Congressional District and his efforts, his crass efforts to shed two-thirds of the city of Scranton, Mr. Speaker, the city of Scranton under this current plan is now divided.

The SPEAKER. Will the gentleman yield.

There are entirely too many conferences on the floor. They are centered around the two leaders' desks and the areas near them. Please. You are distracting to those who are engaged in debate. Many of the offenders are staff people, but there are just as many elected members engaged in needless conversation. Please hold off. This is important to the people debating.

Mr. Blaum, I apologize.

Mr. BLAUM. Thank you, Mr. Speaker.

As I said, Mr. Speaker, because of the crass efforts of the Congressman from the 10th Congressional District, the city of Scranton now stands, under SB 1200 and the Perzel amendment, divided. That is a crime. This is a city of 75,000 people roughly, should not be divided, but guess how it is divided? It is divided so the current Congressman of the 10th District sheds two-thirds of the city of Scranton, the Democratic piece of the city of Scranton, and cedes that to us in Wilkes-Barre so that the new Congressman from this Sixth Congressional District will represent, under this plan, all the way from the city of Scranton through the city of Wilkes-Barre, Pittston, Nanticoke, all the way down to the city of Reading in Berks County. I do not know that one human being can represent all the diverse interests associated and included in this plan.

Mr. Speaker, when you divide, when the Congressman in the 10th Congressional District divided the city of Scranton, the ripple effect is, the ripple effect is that Lackawanna County obviously is now divided. The ripple effect is then that the county of Luzerne is divided into three congressional districts for the first time ever.

Mr. Speaker, believe it or not, in downtown Wilkes-Barre, which I represent, I will be represented by Congressman Kanjorski. I could take a stone, Mr. Speaker, and throw it to Representative Mundy's house. Under this plan, Mr. Speaker, Representative Mundy will be represented by Congressman George Gekas of Harrisburg. That is so absurd. From Representative Mundy's house she could take a stone and, with her good right arm, she could throw a stone and hit Representative Yudichak's house, and they are going to be represented by Congressman Sherwood. In fact, in fact, the city of Nanticoke is also divided between Congressman Kanjorski and Representative Gekas.

I love politics, Mr. Speaker, and I enjoy watching the chess game that happens every 10 years called reapportionment, and as I said at the top of my remarks, we are political realists and understand that the Democratic Congressman from the 11th Congressional District needs to face off against his friend, the Democratic Congressman from the Sixth Congressional District, but what needs to be fixed, Mr. Speaker, is what the Congressman from the 10th Congressional District did in protecting his own political interests and sacrificing the interests of the city of Scranton, the county of Lackawanna, the county of Luzerne, and I daresay all of northeastern Pennsylvania.

Mr. Speaker, I want everyone in northeastern Pennsylvania to understand that Congressman Joe McDade would never let that happen. Congressman Joe McDade, if he was still in office, would never let, would never let this reapportionment plan come out of the Pennsylvania State Senate. Congressman Joe McDade would have protected the city of Scranton, he would have protected Lackawanna County, and he would have protected Luzerne County and the interests of the people, and it can be done, Mr. Speaker, it can be done without affecting any other congressional districts as they are currently drawn or the new districts that need to be created in the southeast.

Mr. Speaker, so for very convoluted reasons, even though the Perzel amendment does not change the map that is currently drawn in northeastern Pennsylvania, I will support the Perzel amendment because we need to continue this process so that hopefully these gross misjudgments on the part of Congressman Sherwood from the 10th Congressional District can be corrected.

So I would ask the members for an affirmative vote. Having said that, Mr. Speaker, obviously I would also be voting in support of the motion by the minority leader to suspend the rules so that he could offer a plan that does, actually does make the fix and correct the travesty which was brought about by Congressman Don Sherwood.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Mercer, Mr. Wilt.

Mr. WILT. Thank you very much, Mr. Speaker.

I rise in support of the Perzel amendment to SB 1200.

As someone who represents a district in the northwest of Pennsylvania, I would like to very briefly just compare and contrast the Perzel amendment to the Senate bill that has been sent over.

Currently the 21st Congressional District, which will become the 11th Congressional District, is comprised of the counties of Erie, parts of Crawford, all of Mercer, and Butler County. Under the Senate plan, which we are amending today, we would have had four new counties introduced into that legislative district – parts of Warren, parts of Venango, parts of Clarion, and parts of Armstrong. To me that is simply too much area, too much area to add to a congressional district. The Perzel amendment would take the now 11th District, simply add the balance of Butler County and a portion of Armstrong County and a small portion of Warren County, which makes much more sense.

Now, we have been told that the Senate bill is being crafted to create another congressional district in southwestern Pennsylvania. My problem with that is that – and my family is from southwestern Pennsylvania; I have a lot of relatives down there – that they have contributed greatly to the population loss that we have in Pennsylvania, and with declining population, we are going to add a congressional seat? It makes absolutely no sense to add a congressional seat in the southwestern part of Pennsylvania with

the hope that perhaps we could carry it, the Republicans could carry it, in an election.

I think when we look at the House Republican plan for reapportionment for northwest Pennsylvania, it makes the most sense. It is the best opportunity that we have to make sure that the folks in northwestern Pennsylvania maintain their identity. It makes the most sense from the way that the population has shifted in Pennsylvania, and it simply handles the situation in southwestern Mercer County in a way that it can be handled and be handled appropriately rather than taking Representative Gruitza's district and basically splitting off his back yard from his front yard.

This amendment is the best thing that we could possibly do in the reapportionment process for the congressional district in northwest Pennsylvania. I urge all of my colleagues to support the Perzel amendment.

Thank you very much, Mr. Speaker.

The SPEAKER. The Chair recognizes the gentleman from Cambria County, Mr. Yewcic.

Mr. YEWCIC. Thank you, Mr. Speaker.

The SPEAKER. Will the gentleman yield, please.

Conferences in the aisles, please break up. Take your seats, please.

The Chair recognizes the gentleman.

Mr. YEWCIC. Thank you, Mr. Speaker.

After watching briefly the Senate debate Monday night, it was obvious that the current bill, SB 1200, was nothing more than a self-serving piece of legislation that created a couple districts so two State Senators could run for Congress. I think that serves nothing more than to disenfranchise Pennsylvania voters from going to the polls, and that is the type of legislation we do not need.

So I certainly support the Perzel amendment in that it makes congressional districts more concise, more central, and probably better geographically for Congressmen to serve. However, I probably will not support the bill in that it does separate geographic regions that have been together for many years and identify with each other. Under the Senate bill Cambria County would be in the same congressional district as Greene County, bordering Ohio and West Virginia, which makes no sense at all. At least under the Perzel amendment it would be more central, workable. However, it does separate geographic areas such as Cambria and Somerset Counties, which have been in the same geographic area politically for many, many years and I do not think should be separated.

Therefore, I will support the Perzel amendment but I will not support the bill.

Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the lady, Ms. Josephs.

Ms. JOSEPHS. Thank you, Mr. Speaker.

I rise with a concern about this bill, this amendment, which is constitutional. As I have explained before to a number of people in various committees and I am happy to have the opportunity to explain again, this bill was referred by the House to the Appropriations Committee on Monday, because we held the calendar open, legislative time Monday, to the Appropriations Committee. It, however, in my opinion, was not available to be referred to the Appropriations Committee because it had not been reported out by the standing committee to which it was originally referred. It was referred to and reported— It was reported out of the standing committee, which is the State Government Committee, which is a committee of which I am the Democratic chair, on Tuesday. Therefore, it was referred before it was reported. This sounds very technical—

The SPEAKER. Will the lady yield, please.

Ms. JOSEPHS. Certainly, sir.

The SPEAKER. Come on. Conferences on the side aisles, please break up. Conferences, please break up. Staff people on the floor not engaged in this bill, please leave the floor or be seated.

Ms. Josephs, I am sorry.

Ms. JOSEPHS. Thank you, Mr. Speaker.

This sounds very technical and very complicated and very abstruse and very arcane, but what happened, because this bill was referred before it was in a position to be reported, was that we missed a legitimate first reading. The Constitution of Pennsylvania requires that every bill have three readings. There is good reason for this. The people who wrote our Constitution understood that the public, through the press or directly or through us, ought to have an opportunity on three different days to see this bill come up so that proper input, proper evaluation, and proper opinion can be conveyed to their elected Representatives, for whom we work. The public pays our salary. We are their servants. We are bound to follow the Constitution.

The Constitution says three different readings on three different days. That did not happen. Article III, section 4, of the Pennsylvania Constitution, the first sentence says, "Every bill shall be considered on three different days in each House."

CONSTITUTIONAL POINT OF ORDER

Ms. JOSEPHS. In this House, because this bill was referred improperly before it was reported – again, let me remind you, it was reported on Tuesday, December 11; it was referred on Monday, December 10 – because of that, I believe that we are in violation of our Constitution, which we are pledged when we take our oath to support, and I move that this bill and all of the amendments attached thereto be declared unconstitutional under Pennsylvania's Constitution, Article III, section 4.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the lady.

The lady, Ms. Josephs, of Philadelphia, raises the point of order that SB 1200, and any amendments thereto, is unconstitutional.

Under rule 4, the Speaker is required to submit questions affecting the constitutionality of a bill and amendments to the House for decision. The Chair now does that.

On the question,
Will the House sustain the constitutionality of the bill?

The SPEAKER. The Chair recognizes the gentleman, Mr. Perzel, on the question.

Mr. PERZEL. Mr. Speaker, just for the information of the members, this was read across the desk on Monday, it was read across the desk on Tuesday, and we are in Wednesday's session. Everything that we did was fully within the Constitution, Mr. Speaker.

Therefore, I would have to ask the members for a "no" vote on the motion that this is not constitutional.

The SPEAKER. Ms. Josephs.

Ms. JOSEPHS. It would be very interesting, I think—

The SPEAKER. Will the lady yield.

Mr. Perzel, I think you—

Mr. PERZEL. I apologize, Mr. Speaker; a "yes" vote.

The SPEAKER. Ms. Josephs. I am sorry.

Ms. JOSEPHS. Thank you, Mr. Speaker.

When the House State Government Committee was convening, I looked at all the documents – the attendance sheet; the recording of the people who made motions and the second; the vote calls, the record of the votes; the proxies that my members and some members on the Republican side signed. All of them, all of them were dated December 11. The record of our own House—

The SPEAKER. Ms. Josephs, please. Your question is on constitutionality. What took place at a committee meeting is out of order.

Ms. JOSEPHS. With all due respect – thank you, Mr. Speaker – the gentleman who spoke before me said it was read Monday, it was read Tuesday, it was read Wednesday. I am speaking to the reading on Monday.

The SPEAKER. And the references he made are referenced to action that took place on the floor, not in committee. I am only being critical of your bringing in committee activity at this time, not anything that took place on the floor.

Ms. JOSEPHS. Not activity; the date of when the committee met.

The SPEAKER. I am not going to argue with you about it. Just try and hold it—

Ms. JOSEPHS. I think I made my point.

The SPEAKER. Wait, please. Just try and hold it to the constitutionality question.

Ms. JOSEPHS. The date that the committee met, regardless of what activity took place, was in real time December 11, Tuesday. That was the date that the bill was reported out. The reading took place on Monday, the 10th. That is not a proper reading under this Constitution.

I think we ought to honor our own Constitution. We are sworn to honor our Constitution. This is not an arcane point. This is really, really important for our constituents, particularly on a bill of this import. Of course, everybody on this floor will vote in the way he or she feels his conscience or her conscience leads her or him, but I make the argument that those people who call this kind of parliamentary legerdemain, this type of arrogance, this type of disregard of the process which makes us look like an honest body, which actually would make us an honest body, is a very bad vote. It hurts all of us.

We all know politicians are not held in very high regard. This is the kind of thing that makes that happen—

The SPEAKER. Ms. Josephs, constitutionality, please.

Ms. JOSEPHS. I ask everybody who cares about this process in this House and about democracy in general, actually, to vote with me.

And, Mr. Speaker, I would appreciate it if you would clarify for the body whether a "yes" or a "no" vote is proper if they are going to vote for me. I would appreciate that. Thank you.

The SPEAKER. You want a "no" vote.

Ms. JOSEPHS. Thank you, Mr. Speaker.

The SPEAKER. On the question of constitutionality, Mr. DeWeese, did you desire recognition?

Mr. Vitali.

Mr. VITALI. I just want to clarify one thing: The bill history indicates the bill was reported out of committee Monday, but actually, it was reported out of committee yesterday. I think we have to— I just want everyone to understand the distinction between legislative time and real time. In fact, the bill was reported yesterday and in real time got both first and second consideration yesterday and third consideration today. So if one reads the Constitution as saying it needs consideration on three separate days, meaning the type days we all understand, it has only gotten 2 days. If one is willing to suspend that and view this in the world of the legislature, that is how we get the 3 days. So it is really only 2 days in real people's time.

The SPEAKER. Mr. DeWeese.

Mr. DeWEESE. Thank you, Mr. Speaker.

Notwithstanding the efficacy of the gentlelady's argumentation and perhaps even the precise constitutional accuracy of her polemics, it is no secret that the parliamentary contrivances that we have been dealing with for the over quarter century that I have served in this chamber are not being sullied today; they are being followed today. And out of respect for the parliamentary machinations, if you will, but the regular sense of doing business in this chamber, we must move the process along for our congressional reapportionment. We will have an opportunity to at least attempt to suspend the rules and fortify this amendment and this bill later on, and with respect to my gentle colleague, I would ask that her position not be sustained and that the motion on constitutionality be rejected.

The SPEAKER. The Chair thanks the gentleman.

On the question of constitutionality, those believing the bill and the amendments before us to be constitutional will vote "aye"; those opposed will vote "no." Ms. Josephs urges a "no" vote.

On the question recurring,
Will the House sustain the constitutionality of the bill?

The following roll call was recorded:

YEAS–137

Adolph	Evans, J.	Maher	Sainato
Argall	Fairchild	Maitland	Sather
Armstrong	Feese	Major	Saylor
Baker, J.	Fichter	Markosek	Schroder
Baker, M.	Fleagle	Marsico	Schuler
Bard	Flick	Mayernik	Semmel
Barley	Forcier	McGeehan	Smith, B.
Barrar	Gabig	McGill	Smith, S. H.
Bastian	Gannon	McIlhattan	Staback
Belardi	Geist	McIlhinney	Stairs
Benninghoff	Godshall	McNaughton	Steil
Birmelin	Gordner	Metcalfe	Stern
Blaum	Gruitza	Michlovic	Stevenson, R.
Boyes	Habay	Micozzie	Stevenson, T.
Browne	Haluska	Miller, R.	Strittmatter
Bunt	Hanna	Miller, S.	Taylor, E. Z.
Butkovitz	Harhart	Nailor	Taylor, J.
Buxton	Harper	Nickol	Tigue
Cappelli	Hasay	O'Brien	Trich
Cawley	Hennessey	Oliver	Tulli
Clark	Herman	Perzel	Turzai
Clymer	Hershey	Petrarca	Vance
Cohen, L. I.	Hess	Petrone	Veon
Coleman	Horsey	Phillips	Watson
Cornell	Hutchinson	Pickett	Wilt
Corrigan	Jadlowiec	Pippy	Wogan
Creighton	Keller	Pistella	Wojnaroski
Dailey	Kenney	Preston	Wright, M.
Daley	Krebs	Raymond	Yewcic
Dally	LaGrotta	Readshaw	Zimmerman
DeLuca	Lederer	Reinard	Zug

DeWeese	Leh	Rohrer	
DiGirolamo	Lewis	Ross	
Donatucci	Lynch	Rubley	Ryan,
Egolf	Mackereth	Ruffing	Speaker

NAYS–61

Bebko-Jones	Freeman	McCall	Shrla
Belfanti	George	Melio	Surra
Bishop	Grucela	Mundy	Tangrem
Caltagrone	Harhai	Myers	Thomas
Casorio	James	Pallone	Travaglio
Cohen, M.	Josephs	Robinson	Trello
Colafella	Kaiser	Roebuck	Vitali
Costa	Kirkland	Rooney	Walko
Coy	Laughlin	Samuelson	Wansacz
Cruz	Lawless	Santoni	Washington
Curry	Lescovitz	Scrumenti	Waters
Dermody	Levdansky	Shaner	Williams, J.
Diven	Lucyk	Solobay	Wright, G.
Eachus	Manderino	Steelman	Youngblood
Evans, D.	Mann	Stetler	Yudichak
Frankel			

NOT VOTING–0

EXCUSED–4

Allen	Civera	Rieger	Roberts

The majority having voted in the affirmative, the question was determined in the affirmative and the constitutionality of the bill was sustained.

On the question recurring,
Will the House agree to the amendment?

The SPEAKER. The Chair returns to the amendment.

The lady, Ms. Mundy, desires recognition. Ms. Mundy, do you desire recognition on the amendment? The lady is recognized. Will the lady yield, please.

Ms. Mundy.

Ms. MUNDY. Thank you, Mr. Speaker.

I understand that reapportionment is a political process, but is not the political process supposed to be used to benefit the people?

I want to speak specifically to northeastern Pennsylvania because I chair the northeast Democratic delegation. Dividing Luzerne County into three separate congressional districts, potentially represented by no one from Luzerne County, and dividing the city of Scranton, dividing Reading in Berks County, does not serve the interests of the people of northeastern Pennsylvania, and if you look at that map, that is absurd. It does not have to be that way; that is not necessary.

And this is not about politics for me; this is about the future of northeastern Pennsylvania, the future of Luzerne and Lackawanna and Berks Counties, the future of our economic and community development. This is crucial to us; this is so important to us. This may be the most important vote that the members of the Luzerne County delegation will cast this year.

I understand that Representative Blaum wants to move the process forward, and I commend him for that. I think he is perhaps politically wiser than I am, because I cannot vote for this abomination of a reapportionment plan and what it does to northeastern Pennsylvania.

Anyone who believes in fairness in the representation of the people by their elected officials can find nothing fair about this reapportionment plan – not the Senate Republican plan, not the House Republican plan. Look at the Democratic map before you vote for this. We have copies down here. It is fair; it is obviously fair from the shape of the districts on the map. Then look at this plan, look at the Senate Republican plan, and tell me if you think that that looks fair to you.

Please do not do this to the hundreds of thousands of people who live in northeastern Pennsylvania. This is not about politics; this is about them and their future.

Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Daley.

Mr. DALEY. Thank you, Mr. Speaker.

The late great Speaker and friend of many of ours, Jim Manderino, always said, he who has the gold rules, and the Senate believes that obviously they think they have all the gold so they are trying to rule, but it is not quite that way, because we in the House have half the gold and we rule half the time, too.

Now, this plan that came from the Senate under SB 1200 was called the most politically blatant reapportionment plan in the United States. That is not me saying this; this is other people that study these issues much more than I.

Representative Blaum used a great analogy talking about throwing a stone, and under SB 1200, if we all stood along the river and we would throw a stone or maybe a silver dollar like George Washington, we would hit Congressman Shuster's new district across the river in Wormleysburg, and if we traveled on the turnpike down to exit 11 and we get off and go up to Altoona to Representative Geist's district and if Representative Geist would throw a stone and hit himself, he would be represented by Representative Shuster, and if we go another 100 miles to Representative Shaner's district out in Fayette County and if Representative Shaner throws a stone and hits his neighbor's house, his neighbor would be represented by Representative Shuster, too.

Representative Wilt was absolutely right, Mr. Speaker. This plan was crafted by political craftsmanship in the Senate to create a new congressional district in southwestern Pennsylvania, the region in which I come from, and we find that absolutely appalling.

We know that southwestern Pennsylvania has lost population over the last 40 years, and we also are political realists to know that there are some subdivisions that have to occur when you lose that type of population. It is all part of the process; we all found out in reapportionment, but what the Senate did was like, if you live in southwestern Pennsylvania, you know about Isaly's. They have a product called chipped ham, and it is called chipped chopped ham, and that is exactly what the Senate did to the redistricting plan in southwestern Pennsylvania. They created ham into chipped chopped ham. They cut up Washington County; they cut up Allegheny County, Beaver, Fayette, Greene, Westmoreland, Armstrong, and Indiana Counties.

Historically in southwestern Pennsylvania, Washington and Fayette Counties, Greene County had one Congressman for the last 50 years. Over the last reapportionment 10 years ago, we came with Congressman Murtha and Congressman Mascara, and under the Perzel plan, although it is not the best— I mean, if the Democrats were in control, there would be a whole different plan, but we are not, and Representative Perzel's plan is the fairest plan, the most equitable plan. It does not shaft all the State.

It does not come into southwestern Pennsylvania and take Congressman Mascara and make him run against Congressman Murtha. It does not bring a new congressional district into Washington County so an aspiring politician from the Senate can come down like a knight in shining armor and represent Washington County because he has a tremendous aspiration to have the Potomac River and the cherry blossoms and being at the United States Capitol at the sacrificial extent of the people of Washington and Fayette and Greene and Westmoreland Counties.

The deed of the Senate in SB 1200 will not go unremarked. We will long remember what they are trying to do, and with Representative Perzel's amendment, we are going to shove it to them. I support it. Thank you.

The SPEAKER. Would the staff people from Reference Bureau come down to the Allegheny section and talk to Mr. Kaiser. They are having trouble getting this amendment on the screens.

The Reference Bureau advises me that it is on the computer; however, you have to access it manually. You have to tap the numbers in on the screen.

The Chair recognizes the gentleman, Mr. Rooney, on the Perzel amendment.

Mr. ROONEY. Thank you, Mr. Speaker.

Mr. Speaker, I am not going to take up the members' time by crying wolf. As some of you know, in my free time I spend a little bit paying attention to Pennsylvania politics, and we know how the die is cast. We know that we are going to take a hit, and obviously, the hit that the Senate of Pennsylvania has proposed is perhaps one of the most egregious acts of a political body that this nation has ever known.

So I agree and concur with my colleagues when they suggest that the Perzel plan is better, but, Mr. Speaker, it is a little bit better, and if it is our intention today to achieve the low standards that we set for this Commonwealth, then we will adopt that and hopefully in doing so will keep the ball in play so that this can go to conference and some good can come of SB 1200. But what we are about today, we are not about dictating Pennsylvania's political future; we are about making sure that Pennsylvania stands as a leader among States in the Federal Congress, and I would submit to each and every one of you, both SB 1200 as presented by the Senate and the Perzel amendment do not meet that litmus test.

When you think about what this will have us do and the effect that it will have on Pennsylvania, you have to consider the names of the individuals who are going to be adversely affected as a result of either of these plans. When you talk about transportation issues in the Congress of the United States, the name of Bob Borski stands out as a leader. When you talk about service and respect on both sides of the aisle, you talk about a Congressman by the name of Paul Kanjorski. When you talk about issues that involve agriculture and rural affairs, you talk about a person as a leader in the Congress like Tim Holden, and the list goes on. I do not have to tell anybody about the clout and influence that is wielded by Congressman Jack Murtha or the contributions of Joe Hoeffel and Frank Mascara to the betterment of all of us in the Commonwealth of Pennsylvania.

Mr. Speaker, all we have to do is think about what has transpired in the last 10 years and think about some of the good Republican members, members who fought for Pennsylvania first, that we have lost as a result of retirement, et cetera. Think about people like Bob Walker and how he was one of the chief engineers of the Republican takeover in the Congress in 1994. Think about a gentleman whose name has been mentioned before, Joe McDade. Think about people like Congressman Goodling and what they were able to do for Pennsylvania. Mr. Speaker, make no mistake about this. This is a blatant attempt to take some junior members of Congress and strengthen their districts at the expense of all the people of Pennsylvania, and I think that is fundamentally wrong.

Now, it has been suggested by some that we are going to have an opportunity to not only improve on the Perzel amendment but also present for your consideration a map that is in the best interests of Pennsylvania, and that is the Democratic plan for reapportionment in this State. I would caution everyone, however, that in order to have that plan presented, we are going to need to suspend the rules, and I think you know what our track record is, at least my friends on this side of the aisle, when it comes to suspending the rules to do good things for the people of Pennsylvania and how we are met with contempt so often in this hall, in this great chamber.

I lastly want to focus on the 15th Congressional District and the Lehigh Valley. The good news for those of us who come from the Lehigh Valley is that Lehigh and Northampton Counties under any proposal will remain intact. The bad news is, under this Perzel amendment, we will have the 15th Congressional District extend into the Philadelphia suburbs, and, Mr. Speaker, when you think about the plausible, reasonable alternatives to what is being proposed, they are plentiful. This Perzel amendment does not meet that test, nor, too, does SB 1200. I would ask you to be very cautious about how we proceed in the ensuing vote on this amendment, knowing full well that it is going to take a suspension of the rules to offer the real plan that makes real sense for Pennsylvania, the House Democrats' plan for reapportionment.

Thank you, Mr. Speaker.

The SPEAKER. The gentleman from Philadelphia County, Mr. Thomas.

Mr. Yewcic, you are after Mr. Thomas.

POINT OF ORDER

Mr. YEWCIC. A point of order, Mr. Speaker.

The SPEAKER. The gentleman will state his point of order.

Mr. YEWCIC. The board reflects amendment 4558 while the computers are amendment 4858. Are they the same amendment or is that a mistake?

The SPEAKER. It is the same amendment. It is a typo on the board, which I understand has been corrected.

Mr. YEWCIC. Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Speaker.

Mr. Speaker, may I interrogate the architect of amendment 4858?

The SPEAKER. Just a moment.

The majority leader will submit to interrogation. He will be there in a moment.

Mr. THOMAS. Thank you, Mr. Speaker.

Mr. Speaker, my concern is with the First Congressional District. As you know, 10 years ago the First Congressional District was 65 to 67 percent minority majority. From the arrangement in this amendment, it appears as though that minority majority influence has been reduced to about 51,

52 percent. So my question is, why was the minority majority influence in the First Congressional District reduced so drastically?

Mr. PERZEL. Mr. Speaker, I have got to go back and at least talk about what occurred here. First off, each congressional district went from about 565,000 people to 650,000 people for this census period. So that meant that in the city of Philadelphia, they were short roughly 85,000 people in both the First and Second Congressional Districts. So right off the bat they were short 85,000 apiece. Both congressional districts lost population during that census period, meaning that they had to pick up, both of them, somewhere around 80,000 to 100,000 people. So that is roughly 160,000 people each. There is a term called— And I will get that term for you in one second.

All right, Mr. Speaker. I hope I can pronounce all the terms my legal expert is giving me here. There is packing, which is voluntary and involuntary, and degeneration, both voluntary and involuntary. Because of the lack of the population and because the seats had to grow, it was involuntary that the minority population went down. You will see that the same thing occurred in the Second, but we did keep the First and the Second Congressional Districts majority minority. We did talk to people, the leader of the NAACP (National Association for the Advancement of Colored People), Jerry Mondesire. He indicated that we had to keep the city of Chester within the First Congressional District, which if you look at our map, we purposely did that in spite of the fact that Congressman Weldon would like to have kept Delaware County whole. But in order to be able to conform to the Voting Rights Act, we made sure that the First Congressional District had the minorities from the city of Chester area going through Tinicum, Mr. Speaker.

So we did the best we could to make the districts majority minority in spite of the fact both congressional districts lost population and both of them had to grow by 85,000. It was unintentional.

Mr. THOMAS. Mr. Speaker, thank you for your comments.

My next concern would run to an acknowledgment that, yes, there has been a loss of population in the First and Second Congressional Districts. However, in the First Congressional District the minority population actually increased over the last decade according to the census. In fact, the African-American community, African-American population, increased by almost 25,000 while the Latino community increased by 40,000 and the Asian community increased drastically, so that a solid minority majority district has now gone to a majority minority district while the population in that district, minority population, has actually grown and not decreased over the last decade. Was any consideration given to those census facts?

Mr. PERZEL. Yes, Mr. Speaker, and had we kept 21 congressional districts, you would be 100 percent right, but we are going from 21 to 19. We are losing two congressional districts, and if you look at the map, which I have a copy of here, or if you look at the description that is on your computer, you will see that we used every African-American community and minority community we could find in order to create the First and the Second Congressional Districts, Mr. Speaker. There are no more. There was nowhere else to go. Because the districts grew and because Philadelphia lost population, what you see now are two majority minority districts, which did shrink a little bit, but that is because they had to be diluted to an extent because of the loss of population, because we lost two seats, Mr. Speaker.

I hear what you are saying, but we did our best with this map to accommodate what you were trying to ask with your question about two majority minority districts.

Mr. THOMAS. Thank you, Mr. Speaker.

Mr. Speaker, if I can be a little bit more specific, 10 years ago the Pennsylvania Supreme Court put the 32d ward, which is the largest African-American ward in Philadelphia County, in the First Congressional District. The 11th ward, 12th ward, 13th ward, 15th ward, 16th ward, all African-American wards, were put in the First Congressional District, but according to this amendment, all of these African-American wards have now been put into the Second Congressional District while population actually grew in those wards in Philadelphia County, and I am concerned with why were they shifted as opposed to looking at other places to increase the African-American population in the Second Congressional District. Why were these wards shifted from the First to the Second in light of what happened 10 years ago and recognizing that there has been no population loss in that community?

Mr. PERZEL. Mr. Speaker, had we done what you suggested, taking the 11th, 12th, 13th, 16th, and 32d wards out of the Second Congressional District, putting them into the First Congressional District, we would have taken the Second Congressional District from being, we would have taken it from a majority minority district to a majority majority district—

Mr. THOMAS. Excuse me; excuse me.

Mr. PERZEL. —and at that point in time, Mr. Speaker, the minority community would have had a chance to win one congressional district rather than two, and we would have been called to task for packing, Mr. Speaker. So we did what we wer told constututionally we were allowed to do, created two majority minority districts and not superpacked one or the other.

Mr. THOMAS. Well, Mr. Speaker, just so that the record is correct, my question was why were those wards taken out of the First and put in the Second in light of the fact the Second now has Cheltenham, which is a minority majority community? That would have made up for the loss in the Second if the census numbers are correct. So my question was really about why were the 32d, 11th, 12th, 13th, 15th, and 16th taken out of the First and put into the Second?

Mr. PERZEL. Mr. Speaker, that is a matter of semantics. I mean, we could have put 10 other ones in, taken 10 other ones out, but we just tried to balance the population to make sure that we had the two seats. That is what we did; that is what the map reflects, and we believe that we have conformed to the Voting Rights Act, Mr. Speaker.

Mr. THOMAS. So my last question is, is it your conclusion that both the First and Second remain minority majority or are they majority minority?

Mr. PERZEL. They are both majority minority, Mr. Speaker.

Mr. THOMAS. Majority minority. So they are both going from minority majority to majority minority, and, Mr. Speaker—

Mr. PERZEL. No, Mr. Speaker. They are both primarily minority districts, Mr. Speaker.

Mr. THOMAS. Now, Mr. Speaker, is it your feeling that you applied the traditional principles of congressional reapportionmer to shaping these districts?

Mr. PERZEL. Absolutely, Mr. Speaker. We made sure that those two were done properly first before we looked at the rest.

Mr. THOMAS. Thank you, Mr. Speaker.

Mr. Speaker, that concludes my interrogation. Thank you.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Cambria, Mr. Yewcic. Do you desire recognition, Mr. Yewcic?

Mr. Yudichak, do you desire recognition? The gentleman is recognized.

Mr. YUDICHAK. Thank you, Mr. Speaker.

I rise today to oppose both the sentiment in the House and the Senate when it comes to drawing the district, congressional district, in northeastern Pennsylvania.

People in northeastern Pennsylvania are hardworking, have a great, rich history, political tradition; they love a fight. They would have no problem in seeing a battle between Congressmen. But what we have seen with the plan in the Senate and the plan of the House, with the stroke of a pen we will now have two Republican Congressmen in Luzerne County and a third. My State House seat: 13 communities; 3 congressional seats; 5 communities in northeastern Pennsylvania split, divided; a Representative from the Harrisburg region coming all the way up into the Wyoming Valley; a Congressman from Reading coming all the way up into the city of Scranton.

This is not a good plan for northeastern Pennsylvania for two reasons. Economic development. We have been preaching and preaching to counties throughout this Commonwealth that you should take a regional approach to economic development. That idea can no longer exist in northeastern Pennsylvania. We have told municipalities to come together, share their resources, to regionalize, and with the stroke of this pen we are dividing those same communities.

This is not a good plan for northeastern Pennsylvania. This is not a good plan for the residents of Luzerne and Lackawanna Counties. Thank you, Mr. Speaker.

The SPEAKER. Ms. Steelman.

Ms. STEELMAN. Thank you, Mr. Speaker.

According to the Constitution, when we are considering reapportionment, the first thing we are supposed to take into consideration is the one-man-one-vote rule and the equality of populations among districts, but the second thing we are supposed to take into consideration is that to the extent possible, district boundaries should reflect the boundaries of other political subdivisions; specifically, counties should not be subdivided unless absolutely necessary. And that is why I am rising to say that although the Perzel amendment is preferable to the Senate version of congressional reapportionment, the House Democratic amendment comes much closer to the constitutional standard that we are set.

If we look at Lebanon under the Perzel amendment, it is split into three congressional districts. Montgomery is split into four congressional districts. Luzerne, as we have already heard, is split into three congressional districts. Fayette is split into three congressional districts, and Chester is split into three congressional districts. All of these counties will have their political power, their ability to influence the decisions of their Representative, so diluted by this trisection that they will be very much disadvantaged as a result.

Under the Democratic plan, Lebanon would remain intact. Montgomery would be split only into two districts, giving it a much more balanced profile. Luzerne would be represented by a single Congressman. Fayette would be split among two congressional districts, but again, this gives a county and the people of that county a stronger voice with their Congressman. Only Chester retains the unfortunate pattern of having three Congressmen, and of course, Philadelphia and Allegheny Counties are big enough that they wind up with more Congressmen than the average. Still, when you look at the pattern, when you look at the compactness of the districts, when you look at the respect for the existing political subdivisions, yes, the amendment that is before us is better than the Senate amendment, as almost anything would be, but there is a far better, more constitutional, and more fair alternative available.

Thank you, Mr. Speaker.

The SPEAKER. On the question of the Perzel amendment, it is the understanding of the Chair that there are three people to speak on this yet, and they are all leaders: Mr. Cohen, Mr. Perzel, and Mr. DeWeese.

The Chair at this time recognizes the gentleman from Philadelphia County, Mr. Cohen, on the question of the Perzel amendment. The gentleman will yield.

The conferences on the floor, please. Mr. Cohen has the floor and is entitled to your attention.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, I have listened with great intensity to the debate on this amendment. I agree with the various criticisms that have been made about this amendment. This is not the amendment that Bill DeWeese or Mike Veon or myself or any other member of leadership or Babette Josephs of the State Government Committee or any other Democrat would have written, but the choice before us is this amendment versus the underlying bill, SB 1200. This amendment is less unfair, is less arbitrary, is less counter to the public interests than SB 1200 is. It does less damage to things that the Democrats and people who believe in political fairness believe in than SB 1200, and therefore, because it does less damage, is less unfair, I urge Democrats to support the Perzel amendment to SB 1200.

The SPEAKER. On the question of the adoption of the Perzel amendment, the Chair recognizes the Democratic floor leader, Mr. DeWeese.

Mr. DeWeese and then Mr. Perzel, and then we are out of this subject for a little bit. Please take your seats. The two floor leaders are entitled to be heard.

Mr. DeWeese.

Mr. DeWEESE. Thank you very much, Mr. Speaker.

I am going to vote in favor of the Perzel amendment and anticipate a moment in short order when I might be able to augment it with my own amendment that would embrace our caucus' perspective. Thank you.

The SPEAKER. Mr. Perzel.

Mr. PERZEL. Thank you, Mr. Speaker.

I think that we all would have liked to have seen a prettier map, but we looked at the one congressional district; I believe it is Congressman Peterson's. He has 19 counties, or parts of 19 counties. So no matter how you draw it, it is not going to look gorgeous on anybody's map, whether the Democrats did it, us, the Senate Republicans, Senate Democrats. But this plan looks to the future, Mr. Speaker. It is a strong plan that works to sustain Pennsylvania's influence in the U.S. House of Representatives despite the fact that we have to lose two seats, Mr. Speaker. This plan has seven seats with Republican voter registration majorities, six with Democrat voter registration majorities, and six where neither party has a majority of the registered votes.

So, Mr. Speaker, in light of losing two Congressmen, it was, I believe, one of the better ways that we could have done this, and I am asking the members to vote for this. We did respect the majority minority districts within the city of Philadelphia – that is Congressman Brady and Congressman Fattah – and those districts are drawn in accordance to the Voting Rights Act.

So with all that being said, Mr. Speaker, I would ask the members to please cast a "yes" vote.

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS–164

Adolph	Evans, D.	Manderino	Scrimenti
Argall	Evans, J.	Mann	Semmel
Armstrong	Fairchild	Markosek	Shaner
Baker, J.	Feese	Marsico	Smith, B.
Baker, M.	Fichter	Mayernik	Smith, S. H.
Barley	Fleagle	McGeehan	Solobay
Barrar	Flick	McGill	Suback
Bastian	Forcier	McIlhattan	Stairs
Bebko-Jones	Frankel	McIlhinney	Steil
Belardi	Freeman	McNaughton	Stern
Burnelin	Gannon	Melio	Stetler
Bishop	Geist	Michlovic	Stevenson, R.
Blaum	Gordner	Micozzie	Strittmatter
Boyes	Grucela	Miller, R.	Sturla
Browne	Gruitza	Miller, S.	Surra
Bunt	Haluska	Myers	Tangretti
Butkovitz	Hanna	Nailor	Taylor, E. Z.
Buxton	Harhai	Nickol	Taylor, J.
Cappelli	Harhart	O'Brien	Tigue
Casorio	Harper	Oliver	Travaglio
Clark	Hasay	Perzel	Trello
Clymer	Hennessey	Petrarca	Trich
Cohen, L. I.	Herman	Petrone	Tulli
Cohen, M.	Hershey	Phillips	Vance
Colafella	Hess	Pickett	Veon
Coleman	Horsey	Pistella	Walko
Cornell	Hutchinson	Preston	Washington
Corrigan	Jadlowiec	Raymond	Waters
Costa	James	Readshaw	Watson
Coy	Josephs	Reinard	Williams, J.
Creighton	Keller	Robinson	Wilt
Cruz	Kenney	Roebuck	Wogan
Dailey	Kirkland	Rohrer	Wright, G.
Daley	LaGrotta	Ross	Wright, M.
Dally	Laughlin	Rubley	Yewcic
DeLuca	Lederer	Ruffing	Youngblood
Dermody	Leh	Saindo	Zimmerman
DeWeese	Lescovitz	Samuelson	Zug
DiGirolamo	Lewis	Saylor	
Diven	Mackereth	Schroder	
Donatucci	Maitland	Schuler	Ryan,
Egolf	Major		Speaker

NAYS–34

Bard	Godshall	McCall	Steelman
Belfanti	Habay	Metcalfe	Stevenson, T.
Benninghoff	Kaiser	Mundy	Thomas
Caltagrone	Krebs	Pallone	Turzai
Cawley	Lawless	Pippy	Vitali
Curry	Levdansky	Rooney	Wansacz
Eachus	Lucyk	Santoni	Wojnaroski
Gabig	Lynch	Sather	Yudichak
George	Maher		

NOT VOTING–0

EXCUSED–4

Allen	Civera	Rieger	Roberts

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question,
Will the House agree to the bill on third consideration as amended?

MOTION TO SUSPEND RULES

The SPEAKER. The Chair recognizes the gentleman, Mr. DeWeese, on the question of suspension of the rules.

Mr. DeWEESE. Mr. Speaker, I move that the House suspend its rules to permit me to offer an amendment.

The SPEAKER. Would you give me that amendment number, Mr. DeWeese? 4848?

Mr. DeWEESE. 4848, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

On the question,
Will the House agree to the motion?

The SPEAKER. Mr. DeWeese, on suspension.

Mr. DeWEESE. Thank you very much, Mr. Speaker.

I would really enjoy being a beneficiary of the same kind of bipartisan support that was just evinced on behalf of my colleague from Philadelphia.

The SPEAKER. Mr. DeWeese, suspend, please.

Conference in the well of the House, break up. Conferences in the well of the House, please break up. Mr. DeWeese has the floor.

Mr. DeWeese, I apologize. You are recognized.

Mr. DeWEESE. Thank you, Mr. Speaker.

I want to reassert the three major reasons why I am projecting this amendment. I think it will make, along with the Perzel amendment, this bill a more worthy legislative product and our congressional reapportionment experience more egalitarian.

If this amendment is adopted, we will still have a majority of Republican Congressmen and Congresswomen in Pennsylvania. This is not an overarching effort on our behalf to be political. We have 21 U.S. Representatives tonight, and at the end of the reapportionment phenomenon, we will have 19. That is because other States from Georgia to California grew more rapidly, and Pennsylvania's congressional delegation will be depleted by two.

The Perzel amendment as it stands now as affixed to the legislation would allow for probably 12 Republicans and 7 Democrats to serve in the Congress. Twelve plus 7 is the 19. Our caucus' position, as it should be from a Democratic perspective, still allows for a Republican domination in the delegation, but it would probably add up to 10 to 9. Undergirding our enthusiasm for this proposal, Mr. Speaker, is that rock-solid GOP bastion in the southeastern corner of the State, Montgomery County.

I would like to think that all of my worthy cohorts from Montgomery County would support me in this effort. There are well over 700,000 people that reside in that posh and boxy

suburban setting, and they only need 646,000 for a U.S. Representative. Montgomery County deserves to have a Congressman or Congresswoman. I am sure that the venerable Agriculture chairman, the hail-fellow-well-met on the back row who is waving to me now, will embrace me, at least in the political vernacular.

The gentlelady from Lower Merion and Plymouth and Whitemarsh, the redoubtable politician par excellence from the 148th District, will now be challenged momentarily. Do we sunder Montgomery County's congressional representation for the next 10 years or do we bring Montgomery County cohesively behind one congressional Representative? That gentle soul from the 70th District who represents Norristown and Upper Gwynedd, I would hope that he would join me on the voting board in a few moments as we try to restore and restitch Montgomery County. That wonderfully intellectually talented woman from the 153d, the lady from Abington and Rockledge, I hope she also will help us make Montgomery County fundamentally whole as a congressional district. And the gentlelady from the 146th, and the dapper man from the 151st, and that great African hunter from the 53d, and the gentlelady from Plymouth and Whitpain, the 61st District's Representative – these men and women from Montgomery County are on the Archimedean fulcrum today in this debate. Will they join us as Democrats as we try to do the wholesome, idealistic thing and keep Montgomery County one congressional district or will you allow it to be pulverized beyond recognition in this process? We would hope that the political fairness inherent in the Democratic amendment would be embraced by our friends from Montgomery County.

You have all heard the arguments from our colleagues from Luzerne and Lackawanna also, and they further buttress our enthusiasm for this amendment. Scranton should not lie in two congressional districts. Why was it bisected by Mr. Sherwood? For bald and seething political aggrandizement; that is why. The city of Scranton deserves better, and we have a chance to restore the city by this amendment.

Luzerne County. Since time immemorial Luzerne County has been represented by one United States Congressman. The depredations of the current process will sunder Luzerne County's congressional representation into three sections. This is not a healthy enterprise and can be corrected by this amendment, then can be forwarded to the State Senate for a conference report.

Mr. Speaker, I think the Democratic amendment is worthy of consideration. It sustains the congressional seniority of many, many decades that have been accrued by Congressman Murtha, Congressman Kanjorski, Congressman Borski, et al, and I would ask for the favorable adoption of this amendment after a suspension-of-the-rules vote is taken.

The SPEAKER. The gentleman, Mr. Perzel.

Mr. PERZEL. Mr. Speaker, I want to thank the gentleman.

We are asking the members here to move this process forward here today, Mr. Speaker. We can take into consideration all the different ideas that have been brought forth here today and look at them in the conference committee, Mr. Speaker, but there are a couple of facts that are undeniable. Unfortunate for us in Pennsylvania, in the city of Philadelphia we lost people, southwestern Pennsylvania lost people, and the coal region lost people, and unfortunately, they are the facts of life. Nobody likes it. I have my own Congressman who is a friend of mine, Congressman Borski. After we created the two majority minority districts, there are still 270,000 people left in the city. So obviously they have to go somewhere, and so far the only county that has been willing to take them is Camden County. Nobody else wanted to take them, and they are going to have to go somewhere, Mr. Speaker.

So there are things in here that are good; there are things in here that are bad. But all in all, Mr. Speaker, I would have to respectfully ask the members not to suspend the rules, but we will take the gentleman's comments into consideration. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,
Will the House agree to the motion?

The following roll call was recorded:

YEAS–95

Bebko-Jones	Frankel	Mayernik	Staback
Belardi	Freeman	McCall	Steelman
Belfanti	George	McGeehan	Stetler
Bishop	Grucela	Melio	Sturla
Blaum	Gruitza	Michlovic	Surra
Buxton	Haluska	Mundy	Tangretti
Caltagrone	Hanna	Myers	Thomas
Casorio	Harhai	Oliver	Tigue
Cawley	Horsey	Pallone	Travaglio
Cohen, M.	James	Petrarca	Trello
Colafella	Josephs	Petrone	Trich
Corrigan	Kaiser	Pistella	Veon
Costa	Keller	Preston	Vitali
Coy	Kirkland	Readshaw	Walko
Cruz	LaGrotta	Robinson	Wansacz
Curry	Laughlin	Roebuck	Washington
Daley	Lawless	Rooney	Waters
DeLuca	Lederer	Ruffing	Williams, J.
Dermody	Lescovitz	Saindo	Wojnaroski
DeWeese	Levdansky	Samuelson	Wright, G.
Diven	Lucyk	Santoni	Yewcic
Donatucci	Manderino	Scrimenti	Youngblood
Eachus	Mann	Shaner	Yudichak
Evans, D.	Markosek	Solobay	

NAYS–101

Adolph	Feese	Maher	Schroder
Argall	Fichter	Maitland	Schuler
Armstrong	Fleagle	Major	Semmel
Baker, J.	Flick	Marsico	Smith, B.
Baker, M.	Forcier	McGill	Smith, S. H.
Bard	Gabig	McIlhattan	Stairs
Barley	Gannon	McIlhinney	Steil
Barrar	Geist	McNaughton	Stern
Bastian	Godshall	Metcalfe	Stevenson, R.
Benninghoff	Gordner	Micozzie	Stevenson, T.
Burnelin	Habay	Miller, R.	Strittmatter
Boyes	Harhart	Miller, S.	Taylor, E. Z.
Browne	Harper	Nailor	Taylor, J.
Bunt	Hasay	Nickol	Tulli
Cappelli	Hennessey	O'Brien	Turzai
Clark	Herman	Perzel	Vance
Clymer	Hershey	Phillips	Watson
Cohen, L. I.	Hess	Pickett	Wilt
Coleman	Hutchinson	Pippy	Wogan
Cornell	Jadlowiec	Raymond	Wright, M.
Creighton	Kenney	Reinard	Zimmerman
Dailey	Krebs	Rohrer	Zug
Dally	Leh	Ross	
DiGirolamo	Lewis	Rubley	

Evans, J.	Lynch	Sather	Ryan,
Fairchild	Mackereth	Saylor	Speaker

NOT VOTING–2

Butkovitz Egolf

EXCUSED–4

Allen Civera Rieger Roberts

Less than a majority of the members required by the rules having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Bill as amended was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

REMARKS SUBMITTED FOR THE RECORD

The SPEAKER. The gentleman, Mr. Lescovitz, I understand you have remarks for the record. Kindly submit them. Thank you very much.

Mr. LESCOVITZ submitted the following remarks for the Legislative Journal:

Good afternoon. I rise to voice my concern over a reapportionment plan I consider to be of great detriment to Pennsylvania. While this measure is a great improvement to that which the Senate proposed, it still will see Pennsylvania with severely diminished representation in DC in number and effective seniority.

Current Republican leadership is putting short-term political gain ahead of the immediate and long-term needs of the Commonwealth of Pennsylvania. I am grateful that House Democrats and Republicans were able to work together to prevent the Senate measure. However, I must express my displeasure at the approach taken overall by the Republican Party in Pennsylvania at the great cost to the Commonwealth.

With the impending retirement of Congressman Bill Coyne, it is increasingly vital to maintain as many ranking members from Pennsylvania in Congress as is possible.

However, rather than draw a plan best for all Pennsylvanians, the Republicans targeted senior congressional members based on party affiliation alone. In going after senior members solely for political gain, Republicans placed their own political goals as the priority over the needs of working families.

For example, Bob Borski, the ranking member on the Subcommittee on Highway and Transportation's seat will be eliminated.

With the loss of Bud Shuster's senior position, Borski now is Pennsylvania's top ranking member on the committee. The Republicans are looking to ensure that position will go to Illinois and hundreds of millions of dollars along with it.

Look at all Shuster was able to accomplish in bringing billions to Pennsylvania for transportation projects whether he found himself in the minority or majority. The "Dean of the Congress," Senator Robert Byrd from West Virginia, has consistently brought huge economic windfalls to his State, and again...regardless of whether his party stood in the minority or majority.

When you lose key players who are in the position to provide your State with funding, you put the livelihood of that State at great risk. Placing political parties before the needs of every Pennsylvanian is not only selfish but also downright irresponsible.

With the maglev project nearing critical stage, and with Pennsylvania one of only two finalists being considered, eliminating Pennsylvania's voice on the Transportation Committee will virtually eliminate the success of the project, costing Pennsylvania billions of dollars in job creation as well as economic development.

T-21, the latest transportation bill, saw a $2.4 billion appropriation to Pennsylvania, translating into a $400 million increase throughout the Commonwealth. Thanks to the efforts and influence of the Pennsylvania delegation on that committee, Pennsylvania is fourth in State transportation dollars, behind California, Texas, and New York. This reapportionment plan would take away our senior voices just as Congress is set to rework the transportation bill that will go into effect in 2003.

When you consider that every billion spent on transportation results in the creation of 42,000 jobs, the reapportionment plan equates to the potential loss of tens of thousands of jobs throughout Pennsylvania.

Every dollar spent on transportation yields $2.60. That is double return on the Commonwealth's investment...a return we may no longer be able to count on as economic stimulus in Pennsylvania.

Not only is Pennsylvania losing Representatives as a result of population shifts, what the Republican plan would do is further erode Pennsylvania's influence for continued funding for economic development, thousands of miles of highway construction, sewer construction, and most importantly, jobs.

Pennsylvania currently is 49th in new job creation. This plan does not look to help working families but rather jeopardizes job growth, local business, and economic development throughout the Commonwealth.

This plan will see Paul Kanjorski and Tim Holden pitted against each other, a plan that is not good for the residents in northeastern Pennsylvania.

When you remove ranking members from office, you tighten the purse strings to billions of dollars vital to Pennsylvania's economic future, a concern clearly not shared by Pennsylvania Republicans.

The SPEAKER. The question before the House is, shall the bill pass finally as amended? On that question, the Chair— If I may interrupt for a moment.

GUESTS INTRODUCED

The SPEAKER. Mr. Belardi, Representative Belardi, has guests here on the floor – Ed and Evelyn D'Agostino of Scranton, Pennsylvania. Would the guests please rise.

CONSIDERATION OF SB 1200 CONTINUED

The SPEAKER. The Chair apologizes to the gentleman, Mr. Blaum, and recognizes him on final passage.

Mr. BLAUM. Thank you, Mr. Speaker.

Mr. Speaker, obviously all of us in northeastern Pennsylvania will be opposing this bill and what it does to the congressional districts of northeastern Pennsylvania, but one of the best comments I heard here on the floor of the House during this debate was just uttered by the majority leader, and I think there is some sincerity there, Mr. Speaker. And I would just ask the gentleman, Mr. Perzel, to look at Luzerne and Lackawanna Counties in a conference committee, and I would say that anyone, and this map will begin to show up in our newspapers in northeastern

Pennsylvania, and when the people of northeastern Pennsylvania see how ridiculous these districts have been drawn, because it was all generated by the unnecessary dividing of the city of Scranton, once you do that, then there is a ripple effect throughout the area. I say to the gentleman, Mr. Perzel, we understand in northeastern Pennsylvania and, as I said earlier, have come to accept the fact that the current Congressman of the 11th Congressional District must face off against the current Congressman of the 6th Congressional District, and we accept that political reality, but, Mr. Speaker, I ask the majority leader, in that conference committee that we hope all comes about, that serious consideration be given to making these changes, making these counties whole. It can be done and still protect the other seats of the other incumbents, which I know the gentleman is of a mind to do, and I understand that. So I take the gentleman at his word that he will consider these various options in a conference committee and, I think, try and correct the devastation which this current bill holds for those of us in northeastern Pennsylvania.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Eachus.

Mr. EACHUS. Thank you, Mr. Speaker.

I rise in opposition to SB 1200 with the inclusion of the Perzel amendment. As my colleagues from Luzerne and Lackawanna Counties have risen today to express their concern about the way these three congressional districts in Luzerne County and Lackawanna County have been drawn, I can tell you that they have absolutely no reference to what we have grown to know as our communities. Greater Scranton, eviscerated across the middle of the city of Scranton. The Wyoming Valley, which was devastated by the flood of 1972, one bank of the Susquehanna on the Wilkes-Barre side in the 6th Congressional District; the other, on the west bank of the Susquehanna, is in the 17th Congressional District. As you move south into southern Luzerne County, it breaks down a sense of community even farther. We have common goals – common economic goals, common goals that embrace the very spirit of charitable organizations. Our United Ways are cut in half. Our sense of, even at the parish church level, St. Francis of Assisi Church in the small borough of West Hazleton is divided in two. Only 400 parishioners; each side of that church pew, the friends of the bride and the friends of the groom are now in two congressional districts. This makes no sense – none. This is not a marriage; this is a divorce. You have divorced our sense of community; you have broken down our sense of where we live; you have taken away a historic understanding of how the anthracite region was meant in the definition of "community."

I will oppose this amendment, and I stand with my other colleagues in solidarity in hopes that the conference committee – if not the conference committee, the State Supreme Court; if not the State Supreme Court, the Federal Supreme Court – will understand that we have been disenfranchised in the northeastern part of this Commonwealth.

Thank you, Mr. Speaker.

The SPEAKER. Mr. Belfanti.

Mr. BELFANTI. Thank you, Mr. Speaker.

Mr. Speaker, my remarks will also be brief and to the point.

I also rise in opposition to the Perzel map as I do the Republican Senate map. I believe both maps, and I believe the press will agree and the people of Pennsylvania when they see them alongside of one another, hopefully in tomorrow's newspapers, will discern that both maps, both the Senate and the House map that we are about to vote on, are simply nothing more than unadulterated gerrymandering. There are wards split; there are precincts split, and if you look at the map offered and drawn up with the assistance of Scott Casper from our caucus, you will see that Pennsylvania's congressional districts are by far more square, more compact, more nicely drawn, and do not extend little snake arms and spider arms through counties into other counties, across rivers, and from the top of the State to the bottom.

So I am hoping that common sense will prevail and that the general public and the State press will exert as much influence on the conferees so that we can adopt a reapportionment plan that is far closer to the one that was recently rejected, offered by the minority leader, and that map, Mr. Speaker, I believe, is one that would be far fairer to all of Pennsylvania. Thank you very much.

The SPEAKER. The gentleman, Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Speaker.

Mr. Speaker, I am hopeful that the majority leader will take into consideration many of the concerns that have been raised this evening. I only add to those concerns. I believe that when he looks at the voting age population and voter participation in the First and Second Congressional Districts of Philadelphia County, he will find that he has actually moved them from minority majority to majority minority in violation of the Voting Rights Act.

So I hope and trust that in the conference committee he looks at those numbers – voting age population, voter participation – as required by the Voting Rights Act.

The SPEAKER. On the question, Mr. Cawley.

Mr. CAWLEY. Thank you, Mr. Speaker.

I do not know if everyone is aware of this, the leadership here in the House and in the Senate, but on several occasions Congressman Sherwood from the 10th Congressional District has stated that he is not in favor of losing Lackawanna County. I would hope that if this does go to a conference committee, that you – I happen to agree with Congressman Sherwood, that Lackawanna County should stay in the 10th Congressional District – and I would hope that if this does go to conference, that Lackawanna County remains in the 10th Congressional District, because as Congressman Sherwood has said, he is adamantly against losing Lackawanna County, and yet this plan divides Lackawanna County.

Thank you very much.

The SPEAKER. The Chair thanks the gentleman.

Mr. Curry.

Mr. CURRY. Thank you, Mr. Speaker.

Mr. Speaker, on Elbridge Gerry day in Harrisburg, I want to speak about the plan. I know how difficult it is to reduce from 21 to 19 the seats, congressional seats, in Pennsylvania, and we lost those seats because of a decline or not a sufficient increase in population statewide. But in Montgomery County, our population grew more than any suburban county in the Philadelphia area, yet it is Montgomery County that is balkanized by this plan. We have a population of 750,000; a congressional district needs 646,000. Montgomery County's 13th Congressional District has existed since the first days of the Republic, and now we bring that to an end.

The State Government Committee held three hearings, of course without a plan, but just to solicit general principles of reapportionment from around the State. In each of those hearings,

people testifying argued that we should seek a community of interest in creating a congressional district, and it appeared that members of the committee agreed that in reapportionment we should find community of interest, and then when it comes to drawing the plan, we eliminate that community of interest for Montgomery County.

I urge a "no" vote on this bill.

The SPEAKER. The Chair thanks the gentleman.

RULES SUSPENDED

The SPEAKER. The Chair recognizes the gentleman, Mr. Perzel.

Mr. PERZEL. Mr. Speaker, I move that the rules of the House be suspended to permit the immediate consideration of this bill on final passage.

The SPEAKER. The gentleman, Mr. Edmiston, was kind enough to point out to the Chair, and that is one of these conferences that you have been seeing, that there was a mixup in the numbers on the calendar and on the voting schedule, and to correct that, at this time we move to suspend the rules.

On the question,

Will the House agree to the motion?

The following roll call was recorded:

YEAS–176

Adolph	Evans, D	Maitland	Schuler
Argall	Evans, J	Major	Semmel
Armstrong	Fairchild	Manderino	Shaner
Baker, J.	Feese	Mann	Smith, B.
Baker, M.	Fichter	Markosek	Smith, S. H.
Bard	Fleagle	Marsico	Solobay
Barley	Flick	Mayernik	Stairs
Barrar	Forcier	McCall	Steil
Bastian	Frankel	McGeehan	Stern
Bebko-Jones	Gabig	McGill	Stetler
Belardi	Gannon	McIlhattan	Stevenson, R.
Benninghoff	Geist	McIlhinney	Stevenson, T.
Burnelin	George	McNaughton	Strittmatter
Bishop	Godshall	Melio	Sturla
Boyes	Gordner	Metcalfe	Surra
Browne	Gruitza	Michlovic	Tangretti
Bunt	Habay	Micozzie	Taylor, E. Z.
Butkovitz	Haluska	Miller, R.	Taylor, J.
Buxton	Hanna	Miller, S.	Thomas
Cappelli	Harhai	Myers	Travaglio
Casorio	Harhart	Nailor	Trello
Cawley	Harper	Nickol	Trich
Clark	Hasay	O'Brien	Tulli
Clymer	Hennessey	Oliver	Turzai
Cohen, L. J.	Herman	Perzel	Vance
Cohen, M.	Hershey	Petrarca	Veon
Colafella	Hess	Petrone	Walko
Coleman	Horsey	Phillips	Washington
Cornell	Hutchinson	Pickett	Waters
Corrigan	Jadlowiec	Pippy	Watson
Costa	James	Pistella	Williams, J.
Coy	Keller	Preston	Wilt
Creighton	Kenney	Raymond	Wogan
Cruz	Kirkland	Readshaw	Wojnaroski
Curry	Krebs	Reinard	Wright, G.
Daley	LaGrotta	Robinson	Wright, M.
Daley	Laughlin	Rohrer	Yewcic
Dally	Lederer	Ross	Youngblood
DeLuca	Leh	Rubley	Yudichak

Dermody	Lescovitz	Ruffing	Zimmerman
DeWeese	Levdansky	Sainato	Zug
DiGirolamo	Lewis	Sather	
Diven	Lynch	Saylor	
Donatucci	Mackereth	Schroder	Ryan,
Egolf	Maher		Speaker

NAYS–22

Belfanti	Josephs	Roebuck	Staback
Blaum	Kaiser	Rooney	Steelman
Caltagirone	Lawless	Samuelson	Tigue
Eachus	Lucyk	Santoni	Vitali
Freeman	Mundy	Scrimenti	Wansacz
Grucela	Pallone		

NOT VOTING–0

EXCUSED–4

Allen	Civera	Rieger	Roberts

A majority of the members required by the rules having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,

Shall the bill pass finally?

The SPEAKER. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS–142

Adolph	Evans, D.	Maitland	Ruffing
Argall	Evans, J.	Major	Sainato
Armstrong	Fairchild	Mann	Saylor
Baker, J.	Feese	Markosek	Schroder
Baker, M.	Fichter	Marsico	Schuler
Barley	Fleagle	Mayernik	Semmel
Barrar	Flick	McGeehan	Shaner
Bastian	Forcier	McGill	Smith, B.
Burnelin	Frankel	McIlhattan	Smith, S. H.
Bishop	Gabig	McIlhinney	Solobay
Boyes	Gannon	McNaughton	Stairs
Browne	Geist	Melio	Steil
Bunt	Gordner	Michlovic	Stern
Butkovitz	Hanna	Micozzie	Stevenson, R.
Cappelli	Harhai	Miller, R.	Strittmatter
Clark	Harhart	Miller, S.	Sturla
Clymer	Harper	Myers	Tangretti
Cohen, L. J.	Hasay	Nailor	Taylor, E. Z.
Cohen, M.	Hennessey	Nickol	Taylor, J.
Colafella	Herman	O'Brien	Travaglio
Coleman	Hershey	Oliver	Trello
Cornell	Hess	Perzel	Trich
Corrigan	Horsey	Petrarca	Tulli
Costa	Hutchinson	Petrone	Vance
Coy	Jadlowiec	Phillips	Washington
Creighton	James	Pickett	Waters
Cruz	Josephs	Pistella	Watson
Dailey	Keller	Preston	Williams, J.
Daley	Kenney	Raymond	Wilt
Dally	Kirkland	Readshaw	Wogan
DeLuca	LaGrotta	Reinard	Wright, M.
Dermody	Laughlin	Robinson	Youngblood
DiGirolamo	Lederer	Roebuck	Zimmerman
Diven	Leh	Rohrer	

Donatucci	Lewis	Ross	Ryan,
Egolf	Mackereth	Rubley	Speaker

NAYS–56

Bard	George	Manderino	Stevenson, T.
Bebko-Jones	Godshall	McCall	Surra
Belardi	Grucela	Metcalfe	Thomas
Belfanti	Gruitza	Mundy	Tigue
Benninghoff	Habay	Pallone	Turzai
Blaum	Haluska	Pippy	Veon
Buxton	Kaiser	Rooney	Vitali
Caltagirone	Krebs	Samuelson	Walko
Casorio	Lawless	Santoni	Wansacz
Cawley	Lescovitz	Sather	Wojnaroski
Curry	Levdansky	Scrimenti	Wright, G.
DeWeese	Lucyk	Staback	Yewcic
Eachus	Lynch	Steelman	Yudichak
Freeman	Maher	Stetler	Zug

NOT VOTING–0

EXCUSED–4

Allen	Civera	Rieger	Roberts

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk return the same to the Senate with the information that the House has passed the same with amendment in which the concurrence of the Senate is requested.

DEFENDANT'S EXHIBIT 4

COMMONWEALTH OF PENNSYLVANIA

LEGISLATIVE JOURNAL

THURSDAY, JANUARY 3, 2002

SESSION OF 2002 — 186TH OF THE GENERAL ASSEMBLY — No. 3

HOUSE OF REPRESENTATIVES

The House convened at 1 p.m., e.s.t.

THE SPEAKER (MATTHEW J. RYAN) PRESIDING

PRAYER

REV. BARBARA C. YORKS, Chaplain of the House of Representatives and pastor of Paxton United Methodist Church, Harrisburg, Pennsylvania, offered the following prayer:

Let us pray:

Dear God, we praise You as we move into this new year as the author of the year. We praise You for Your wisdom, Your power, Your strength, and Your direction. As we look back over the 2001, we recognize that it was a year of challenge, a year of oustacles and blocks in our nation's progress, and yet a year when hope was renewed. We thank You for Your power and Your direction in days that have passed, and we anticipate and look forward to Your working in this year.

We thank You for the privilege and the challenge that our offices hold, and we ask for Your help as we make the decisions that are necessary, that we make the choices that are needed, and we ask that You help us in moving forward as a group in helping for our State and for our nation, that You lead us, that You guide us, that You sustain us during the difficult times. We thank You for the nation in which we live and the freedoms that we enjoy.

We ask that You be with us this day and work with us as we move into the days of 2002. We commit this time to You. Amen.

PLEDGE OF ALLEGIANCE

(The Pledge of Allegiance was recited by members and visitors.)

JOURNAL APPROVAL POSTPONED

The SPEAKER. Without objection, the approval of the Journal of Wednesday, January 2, 2002, will be postponed until printed. The Chair hears no objection.

REPUBLICAN AND DEMOCRATIC CAUCUSES

The SPEAKER. Members within sound of my voice in their offices, it will not be necessary to come to the floor. As soon as a little housekeeping is done, there will be an immediate call for a caucus in both caucus rooms. Both Republicans and Democrats will caucus immediately.

There will be no votes taken at this time.

COMMUNICATIONS FROM GOVERNOR

APPROVAL OF HOUSE BILLS

The Speaker laid before the House communications in writing from the office of His Excellency, the Governor of the Commonwealth, advising that the following House bills had been approved and signed by the Governor:

HB 209, and **HB 1633**.

BILLS REMOVED FROM TABLE

The SPEAKER. The Chair recognizes the majority leader.

Mr. PERZEL. Mr. Speaker, I move the following bills be taken from the table:

HB 1012;
HB 2020;
HB 2052;
HB 2059; and
HB 2183.

On the question,
Will the House agree to the motion?
Motion was agreed to.

BILLS ON SECOND CONSIDERATION

The following bills, having been called up, were considered for the second time and agreed to, and ordered transcribed for third consideration:

HB 1012, PN 1157; HB 2020, PN 2660; HB 2052, PN 3086; HB 2059, PN 2709; and HB 2183, PN 3092.

BILLS RECOMMITTED

The SPEAKER. The Chair recognizes the gentleman from Lancaster, Mr. Barley.

Mr. BARLEY. Mr. Speaker, I move the following bills be recommitted to the Committee on Appropriations:

HB 1012;
HB 2020;
HB 2052;
HB 2059; and
HB 2183.

On the question,
Will the House agree to the motion?
Motion was agreed to.

BILL REMOVED FROM TABLE

The SPEAKER. The Chair recognizes the gentleman, Mr. Smith.

Mr. S. SMITH. Mr. Speaker, I move that HB 408 be taken from the table.

On the question,
Will the House agree to the motion?
Motion was agreed to.

BILL TABLED

The SPEAKER. The Chair recognizes the gentleman, Mr. Smith.

Mr. S. SMITH. Mr. Speaker, I move that HB 408 be returned to the table.

On the question,
Will the House agree to the motion?
Motion was agreed to.

COMMUNICATION FROM SPEAKER

The SPEAKER. A communication from the Speaker, which the clerk will read.

The following communication was read:

House of Representatives
Commonwealth of Pennsylvania
Harrisburg

December 11, 2001

The Honorable Jim Lynch
162A East Wing
Harrisburg, PA 17120

Dear Jim:

Pursuant to House Resolution No. 49 of 2001, I hereby appoint you Chairman to replace Representative Peter J. Zug to the Task Force to evaluate and make recommendations regarding the utilization of certain Commonwealth-owned lands for the 2001-2002 Legislative Sessions of the General Assembly.

Very truly yours,
Matthew J. Ryan
The Speaker

MJR:nk

cc: The Honorable John E. Barley
The Honorable Arthur D. Hershey
The Honorable Peter J. Zug
The Honorable Ronald E. Miller
The Honorable Jerry A. Stern
Joint State Government Commission
Governor's Office of Boards and Commissions
Jackie Jumper

APPROPRIATIONS COMMITTEE MEETING

The SPEAKER. The Chair recognizes the gentleman, Mr. Barley, for the purpose of making an announcement.

Members, please pay attention for a moment. We will shortly be going to caucus.

Mr. Barley.

Mr. BARLEY. Thank you, Mr. Speaker.

I would like to call for a meeting of the House Appropriations Committee immediately on recess. It is a very short meeting. There are only two bills. So if members could report, we could then leave promptly for caucus. Thank you.

The SPEAKER. The Chair thanks the gentleman.

Any announcements prior to the break for caucus?

Mr. Cohen, any ideas on the amount of time going to be necessary for this, or Mr. Smith? Mr. Smith, can you give us an idea of how much time you need for caucus?

Mr. S. SMITH. I would not think we would need more than an hour, Mr. Speaker.

Mr. COHEN. That sounds reasonable to me, Mr. Speaker. The question though is, how much time— When are we allowed to vote on this bill?

The SPEAKER. It was posted on the voting schedule yesterday at 4:10, so we will not vote on it until 4:10, but I am expecting, the leaders are expecting there will be some debate on it, so that we can return before 4:10 and start the debate if we are of a mind to do that.

Mr. COHEN. Maybe about 3 o'clock, Mr. Speaker?

The SPEAKER. I am sorry. Would you repeat that.

Mr. COHEN. I am suggesting maybe we come back at 3 o'clock.

The SPEAKER. That is fine.

RECESS

The SPEAKER. Without objection, this House will stand in recess until 3 p.m.

Members, please report to the caucus rooms to caucus on the congressional reapportionment situation.

RECESS EXTENDED

The time of recess was extended until 3:30 p.m.; further extended until 4 p.m.

AFTER RECESS

The time of recess having expired, the House was called to order.

LEAVES OF ABSENCE

The SPEAKER. Members will please take their seats. Members, please take your seats.

The Chair is about to take today's master roll call.

Prior to taking the roll call, the Chair recognizes the gentleman, Mr. Smith, who requests a leave be granted to the following Republican members for the day: STRITTMATTER, B. SMITH, REINARD, BOYES, and Mr. SAYLOR from York County. Without objection, these leaves will be granted. The Chair hears no objection.

The Chair recognizes the gentleman, Mr. Veon, who requests a leave of absence for the following members for today's session: Ms. BEBKO-JONES, Ms. JOSEPHS, Mr. TRELLO, Mr. ROONEY, and Mr. CRUZ. Without objection, these leaves will be granted. The Chair hears no objection. The leaves are granted.

MASTER ROLL CALL

The SPEAKER. The Chair is about to take today's master roll call. Members will proceed to vote.

The following roll call was recorded:

PRESENT–192

[illegible]	Evans, J.	Maitland	Schroder
	Fairchild	Major	Schuler
Argall	Feese	Manderino	Scrimenti
Armstrong	Fichter	Mann	Semmel
Baker, J.	Fleagle	Markosek	Shaner
Baker, M.	Flick	Marsico	Smith, S. H.
Bard	Forcier	Mavernik	Solobay
Barley	Frankel	McCall	Staback
Barrar	Freeman	McGeehan	Stairs
Bastian	Gabig	McGill	Steelman
Belardi	Gannon	McIlhattan	Steil
Belfanti	Geist	McIlhinney	Stern
Benninghoff	George	McNaughton	Stetler
Burmeln	Godshall	Melio	Stevenson, R.
Bishop	Gordner	Metcalfe	Stevenson, T.
Blaum	Grucela	Michlovic	Sturla
Browne	Gruitza	Micozzie	Surra
Burn	Haney	Miller, R.	Tangretti
Butkovitz	Haluska	Miller, S.	Taylor, E. Z.
Buxton	Hanna	Mundy	Taylor, J.
Caltagirone	Harhai	Myers	Thomas
Cappelli	Harhart	Nailor	Tigue
Casorio	Harper	Nickol	Travaglio
Cawley	Hasay	O'Brien	Trich
Civera	Hennessey	Oliver	Tulli
Clark	Herman	Palione	Turzai
Clymer	Hershey	Perzel	Vance
Cohen, L. J.	Hess	Petrarca	Veon
Cohen, M.	Horsey	Petrone	Vital
Colafella	Hutchinson	Phillips	Walko
Coleman	Jadlowiec	Pickett	Wansacz
Cornell	James	Pippy	Washington
Corrigan	Kaiser	Pistella	Waters
	Keller	Preston	Watson
	Kenney	Raymond	Williams, J.
Creighton	Kirkland	Readshaw	Wilt
Curry	Kotis	Rieger	Wogan
Daley	LaGrotta	Roberts	Wojnaroski
Daley	Laughlin	Robinson	Wright, G.
Dally	Lawless	Roebuck	Wright, M.
DeLuca	Lederer	Rohrer	Yewcic
Dermody	Leh	Rosc	Youngblood

DeWeese	Lescovitz	Rubley	Yudichak
DiGirolamo	Levdansky	Ruffing	Zimmerman
Diven	Lewis	Sainato	Zug
Donatucci	Lucyk	Samuelson	
Eachus	Lynch	Santoni	
Egolf	Mackereth	Sather	Ryan, Speaker
Evans, D.	Maher		

ADDITIONS–0

NOT VOTING–0

EXCUSED–10

Bebko-Jones	Josephs	Saylor	Strittmatter
Boyes	Reinard	Smith, B.	Trello
Cruz	Rooney		

LEAVES ADDED–1

Preston

COMMUNICATION FROM DEPARTMENT OF HEALTH

The SPEAKER. The Chair acknowledges receipt of the report of the "2000 Abortion Statistics" submitted by the Department of Health.

(Copy of communication is on file with the Journal clerk.)

ANNOUNCEMENT BY SPEAKER

The SPEAKER. The Chair at this time requests the attention of the members.

Representative Chuck McIlhinney became a father last night of a 7-pound-3-ounce baby boy named Charles III. Mother and son are doing fine.

The gentleman is recognized.

Is this your first? I have you under interrogation.

Mr. McILHINNEY. Yes, it is, Mr. Speaker. The first grandchild as well.

The SPEAKER. The gentleman is recognized.

Mr. McILHINNEY. I would just like to invite all my colleagues to stop by my office or my desk to join me in a celebratory cigar, those who wish to partake, to mark this momentous occasion. Thank you very much.

The SPEAKER. The Chair thanks the gentleman.

Hopefully this momentous occasion will not be celebrated in the hall of the House. No.

SENATE MESSAGE

REPORT OF COMMITTEE OF CONFERENCE ADOPTED BY SENATE

The clerk of the Senate, being introduced, informed that the Senate has adopted the report of the committee of conference on the subject of the differences existing between the two Houses on **SB 1200, PN 1645.**

CALENDAR

REPORT OF COMMITTEE OF CONFERENCE

Mr. PERZEL called up for consideration the following report of the committee of conference on **SB 1200, PN 1645,** entitled:

An Act to apportion the Commonwealth of Pennsylvania into congressional districts in conformity with constitutional requirements; providing for the nomination and election of Congressmen; and requiring publication of notice of the establishment of congressional districts following the Federal decennial census.

On the question,

Will the House adopt the report of the committee of conference?

The SPEAKER. Those in favor of adopting the conference committee report will vote "aye"; opposed—

Mr. Santoni, do you desire to be recognized?

Mr. SANTONI. Thank you, Mr. Speaker.

I know everybody wants to roll this thing, but a few of us have some concerns about SB 1200, and I am one of them.

Mr. Speaker, I stand in opposition to SB 1200, conference report, for a number of different reasons. Mr. Speaker, if you thought the last redistricting legislation that we passed in this House was bad, this one is 10 times worse.

I am very sad and disappointed in what we have just been presented just yesterday – it was passed out of the conference committee – because what has happened is the big wheels, the high rollers down in Washington, DC, are telling us here in Pennsylvania how to split up our congressional delegation, our congressional districts, behind closed doors, I might add. People down in Washington that have put forth this plan to this House do not care about our communities, do not care about our neighborhoods. They care about one thing, and that is power, raw power.

Mr. Speaker, we all know that the population is shifting in this country. It is shifting from the Northeast part of this country, where we live, to the South and to the Southwest and to the West, and we are in a position where we lose two Congress people, from 21 to 19. And I understand the political reality of what is happening when the Republicans control the House and the Republicans control the Senate and the administration is Republican. We were under the assumption that the two Congressmen that we would lose would be Democratic Congressmen, but the Republican majority did not stop there. The Republican majority continued on to chop up two more Democratic Congressmen. So right now we have 10 Democrats and 11 Republicans, and after this plan is approved, which I think it will be, there will be 6 Democrats left and 13 Republicans.

Mr. Speaker, we are chopping up areas of this Commonwealth that have actually grown in population. Montgomery County – and I hope that some of my colleagues from Montgomery County will get up and argue against this plan – and the county that I reside in, that I represent, is being chopped up, Berks County. It is being chopped up into three congressional districts, Mr. Speaker, three congressional districts. We have been one congressional district – Berks and Schuylkill Counties have comprised the majority of that district – for as long as I have been on this earth, but because of the power brokers down in Washington, DC, and because we are represented by a Democratic Congressman, they are going to chop us up three ways. They are actually going to chop the city of Reading up, a third-class city that has about 75,000 people in it, two ways. So our clout in Washington not only would be diminished, it would probably be gone forever.

Of the three congressional districts that now, not now, but will be representing Berks County, one congressional district, about 30 percent of the constituents in Berks County; the other congressional district, about 20 percent of the constituents will be located in Berks County; and the final congressional district, somewhere in the neighborhood of about 5 to 6 percent of the constituents of that congressional district will reside in Berks County. So when those Congressmen are doling out those congressional dollars for a number of different Federal programs, the counties that represent the majority of the constituents are going to get the cake and Berks County is going to get the crumbs.

I hear a lot of the arguments from some of my colleagues. I hear the argument that it is better to have two or three Congressmen representing your county than one, two or three heads are better than one, but let us be honest. When the larger percentage of the constituents of that congressional district are not located in Berks County, Berks County is not going to get their share of the pie.

And I hear another argument: Well, the redistricting is not really a concern of the average citizen out there; it is an insider game; you guys up in Harrisburg and Washington, you are playing that game. But, Mr. Speaker, it might be, and when you take a poll of your constituents, redistricting is certainly not on the radar screen. Education, economic development, transportation, taxes, those are the issues that the people of my district and I am sure the people of your district are concerned about, not redistricting, but make no mistake about it, they are related.

When you are a Congressman and you have X amount of Federal dollars to bring home to your district, you are not going to focus on the minority of your district. When you are bringing economic development money home, transportation issues and transportation funding home, education dollars home, that is what people are concerned about, and whether they put redistricting on the poll or not, that is what they are going to yell at us for when we cannot bring home that money back to our legislative districts and our congressional districts.

A member of the Berks County Chamber of Commerce spoke to me the other day in opposition to this plan for obvious reasons, and he said to me that when he first saw the draft of this reapportionment plan, he thought it was a joke; he laughed. I wish it was April 1, Mr. Speaker, but it is not; it is January 3, and the reality of this plan is getting ready to hit us.

In Berks County, headed by one of our county commissioners, and, really, a unanimous board of county commissioners back home have what is called the Reading-Berks Economic Development Partnership that they have been working together with private enterprise and government, and they have been working on this and it is finally coming to fruition, and it is going to require State and Federal dollars to help move it forward, and, Mr. Speaker, the fact that we are going to be chopped up three ways is probably going to put a major crimp in that initiative.

Mr. Speaker, I understand the political ramifications of this plan. I have been here for five terms and I am not a novice at that, but let us talk about the political reality of it. Let us talk about what

Berks County has done. Berks County is a Republican County, Speaker. There are seven members of the Berks County ation that come to Harrisburg – two are Democrats, five are Republican – and when our plan is approved for the State House and the State Senate, we are going to have seven Republicans and two Democrats. In the State Senate with the new plan, there are going to be three Republican Senators, one Democratic Senator. Every row office in Berks County, with the exception of one, is Republican. So why are you doing this to us, Mr. Speaker? We are a Republican county.

Mr. Speaker, maybe some of my colleagues have not had a lot of correspondence with regard to redistricting, but I have. The business community, typically a Republican stronghold back in Berks County, is vehemently opposed to this redistricting plan. There was just a letter to the editor today from the leader of one of the veterans groups in Berks County. They are vehemently opposed to this legislation and what it is going to do to the veterans groups of Berks County.

The farming community, of which our Congressman is the only Democratic member of the delegation that is sitting on that presently, Congressman Tim Holden, will be hurt because he no longer will be a member of the Agriculture Committee, certainly if he is no longer a member of Congress.

Mr. Speaker, I understand what is going to happen today and I understand the political reality and I know that the deals have been made and promises have been made and the deals have been cut, but I am going to keep an eye on the board and put up a lot of s for a lot of different areas of this Commonwealth, and I know deals have been cut and I understand that, and I may be a donkey instead of an elephant, Mr. Speaker, but I am not going to forget.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Philadelphia County, Mr. Cohen, on the question of concurrence.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, most of the time when we do things in the House of Representatives the rest of the nation does not pay a lot of attention. I have a feeling that this is the kind of vote that a lot of people in this country are going to pay attention to.

So far in the entire country this year, there has been no State which has adopted a reapportionment plan which has eliminated more than two congressional seats of either political party. This plan breaks new ground by eliminating at least four members of the Democratic Party.

So far, Mr. Speaker, in the history of this country, no plan has ever been declared unconstitutional strictly on the basis of political gerrymandering. In 1986 the Supreme Court issued a decision in the case of Davis v. Bandemer, which said that plans could be declared unconstitutional for political gerrymandering but in the case at issue in the State of Indiana, in which after a plan was adopted the Democrats got 52 percent of the vote and 43 percent of the House seats, that difference between the votes and the se seats was not significant enough to be counted as political ymandering, but here under this plan I would think the Democrats could get 65 percent or 70 percent of the total vote in the State of Pennsylvania for Congress and still not get a majority of the House seats.

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This may be the plan that the Supreme Court or the Third Circuit Court of Appeals would agree could be held unconstitutional purely on the basis of political gerrymandering. Whether the courts find that this plan is an unconstitutional gerrymander or not, it is a bad plan. It helps some Democratic Congressmen, including one very good friend of mine, but it has the effect of seriously discriminating against the right of registered Democrats in the Commonwealth of Pennsylvania to elect Congressmen. It requires a massive landslide of unprecedented proportions in Pennsylvania for the Democrats to get a majority of the Pennsylvania congressional delegation, and therefore, I will vote "no" and urge others to vote against this plan.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Delaware County, Mr. Vitali.

Mr. VITALI. Thank you, Mr. Speaker.

I rise in opposition to the conference report, and I was not really going to weigh in on this issue until I really took a look at this map and started to really realize the absurdity of some of these districts and the cold, hard politics of this issue and how what is best for the people is just simply put aside on this, and I know we are not going to change the outcome here today, but I think it is important to just underscore, especially for those of you who are about to cast a "yes" vote, what a cold, hard political vote it is, totally disconnected from what is best for the people of Pennsylvania.

I was looking, for example, at the 12th Congressional District. I count that being in nine, nine different counties when it could easily have been put in three or four counties. This stretches all over western Pennsylvania. It is difficult to justify how this could be in the best interest of the people. The same is true for the 18th Congressional District, which just stretches through county after county.

In my own Seventh Congressional District, the newly created Sixth District is totally wrapped around it. It is just really indefensible that we could craft districts this way.

I was told that the Eighth District in Bucks County just jumps in and takes a little piece of Montgomery County, the reason being for ethnic reasons. I am told they just wanted to make the 13th District more Republican by pulling out a Jewish section of the 13th District. To me that is not defensible; it is not good politics.

Mr. Speaker, I would urge a "no" vote, and I would hope that people out there realize what a bad vote this is for those who cast their vote in the affirmative. Thank you.

The SPEAKER. The Chair thanks the gentleman, Mr. Vitali, and recognizes the lady from Indiana County, Ms. Steelman. Will the lady yield, please.

You did the right thing then.

Conferences on the floor, please break up.

Ms. STEELMAN. Thank you, Mr. Speaker.

The SPEAKER. Will the lady yield, please.

Ms. STEELMAN. Yes.

The SPEAKER. Conferences in the back of the House, please.

Ms. Steelman.

Ms. STEELMAN. Thank you, Mr. Speaker.

The plan that is before us is a reflection of the partisan political process by which it was developed. As many of you know, for a number of years now I have tried to convince the General Assembly that we would better serve the people of Pennsylvania if we moved away from this process and adopted a nonpartisan and nonpolitical process of reapportionment. Obviously, I have failed in that endeavor, and as a result, what we

see in this plan is a set of congressional districts that do not serve the interests of the people of Pennsylvania; they do not serve the interests of many of the people who are incorporated within these districts, and it is questionable whether they serve the interests of Pennsylvania as a whole.

It would be hard to develop a truly responsive representative plan as long as we are so dramatically politicized in our process, but at least the last time that we went through reapportionment, when I thought it could not get any worse, we were more nearly politically balanced. At this point we have almost complete control of the political process by one party, and unfortunately, what we see in this plan is the epitome of the aphorism that power corrupts and absolute power corrupts absolutely. This plan is essentially at its heart corrupted by the desire to grab power rather than to perform the act that we should, as members of the government, to serve the people that we are supposed to represent.

Thank you. I hope that we will vote not to concur, although I have very little hope of that happening. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the lady.

The Chair recognizes the lady from Berks County, Mrs. Miller.

Mrs. MILLER. Thank you, Mr. Speaker.

I rise in support of SB 1200, and my purpose for supporting this legislation is because, unlike my colleague from Berks County, I feel that this congressional redistricting at this point will protect Berks County's interests in Washington, DC.

Earlier in the week when we looked at a plan that had Berks County carved up into four congressional districts, my colleagues and I were not pleased. So therefore, we started the communication that had been going on, but when we saw the four-way plan, we decided that this was not something we could accept and so we reinvigorated the communication with the leadership in the Senate. As a result of that, we saw the three-way congressional district plan come forward, and as we look at it now, we can see that the one portion that is going into the district now served by Congressman Gekas is strictly one that has the major portion of Berks County's agricultural community tied in all the way from Earl and Oley Townships all the way across the northern part of Berks County into Lebanon, Dauphin, Schuylkill, and Perry Counties.

Mr. Speaker, this is a benefit for us, and even though our current Congressman has served on the House Agriculture Committee in Washington, DC, we have assurances that Pennsylvania will continue to have a person in that seat in the House in Washington.

Mr. Speaker, we have also been working with and making sure that anyone who would be serving as our new Congressman in the Sixth Congressional District does not—

The SPEAKER. Will the lady yield for a moment.

Please, conferences on the floor, move off the floor. Please.

Mrs. Miller.

Mrs. MILLER. Thank you, Mr. Speaker.

As I was saying, I feel that we have started a communication. Even today with the people who may be representing Berks County if this plan is approved, they are coming into Berks County, meeting with our leadership, talking with us, and they are not going to forget our urban center, the city of Reading. Mr. Speaker, I believe that we must continue to make sure that we as citizens, we as State legislators, continue to communicate with our Congressmen to make sure that we stay in touch with them so

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that we can continue to have the benefits of having programs that will benefit the city of Reading.

And, Mr. Speaker, for those reasons and because of the fact that I feel this is the best plan that we can have at the moment, I am going to be supporting SB 1200.

The SPEAKER. The Chair thanks the lady.

Mr. James, do you wish to speak on this subject? The gentleman is recognized.

Mr. JAMES. Mr. Speaker, I am trying to find my remarks. Can you come back to me? Can you be at ease or either come back to me?

The SPEAKER. No, it will not be easier. We have only the two floor leaders to debate and we save them until last.

Mr. JAMES. Okay. I am all right now.

The SPEAKER. If you like, you could submit your remarks for the record.

Mr. JAMES. That is okay, Mr. Speaker. I got it.

The SPEAKER. Mr. James, you are recognized.

Mr. JAMES. Thank you, Mr. Speaker.

Mr. Speaker, I would like to express my frustration with this proposed congressional redistricting plan. I am disturbed and concerned about this plan not only because of how it would impact the majority of my constituents but also because of what it will mean to the minority population of Philadelphia.

Mr. Speaker, 10 years ago I filed a court action against the redistricting plan on behalf of the Pennsylvania Legislative Black Caucus under the leadership of then Representative and now Senator Vincent Hughes, and our goal was to ensure that the majority of the First Congressional District be of the minority population whereby it would become a majority minority district, because Philadelphia qualifies, Mr. Speaker, and Philadelphia deserves two majority minority districts. The settlement that was reached as a result of that court suit gave the First Congressional District a 52-percent African-American population and a 10-percent Hispanic population.

This current redistricting plan reduces that and it gives the First Congressional District only about a 47-percent African-American population and a 12-percent Hispanic population. Now, some might say, well, why am I so concerned when the district is still slated to have a majority of minorities? Well, I am satisfied with that part, that it is going to be a majority of minorities, but I am distressed that the district was redrawn to represent fewer African Americans, thereby reducing their vote and an opportunity to elect an African American.

In a city with a significant African-American population, the redrawn First Congressional District does not reflect the city's population. Of the city's 1.5 million people, the African-American population, according to the 2000 U.S. census, is only 2 percent less than that of the white population, and compared with the 1990 census, the white population in Philadelphia has decreased while the African-American population has increased. I believe, Mr. Speaker, that the new district does not adequately reflect the minority population and brings about a significant decrease in African-American representation.

It is difficult for me to approve a plan that I object to, but I reluctantly am doing so because this issue needs to be addressed now, and I do not want to have the Federal court throw it back to the State Supreme Court – unless, of course, then maybe Judge Wogan is on the State Supreme Court; then that may be okay – but I do not want it to go on to the Supreme Court under its

new leadership to be decided how our district maps should be
r vn.

additionally, Mr. Speaker, Congressman Brady, who currently represents the First District, in a conversation that I had with him yesterday, has said that he welcomes a larger minority population for his district, and although he is disappointed with the new plan, he, however, accepts it. Congressman Fattah, on the other hand, who is also a Congressman in my district, he does not like the plan that much either, and he is opposed to the plan and he does not accept it.

But I also reluctantly agree to this new plan because Congressman Brady has indicated that the African-American voting-age population will increase by 16,000 within the next 2 years. However, Mr. Speaker, I am voicing my extreme disappointment that the First Congressional District does not remain a majority minority district of African Americans.

So reluctantly I would cast my vote for this, Mr. Speaker. Thank you.

The SPEAKER. The gentleman, Mr. Belfanti. Will the gentleman yield for a moment.

Members, please.

Mr. Belfanti.

Mr. BELFANTI. Thank you, Mr. Speaker, and what a great day to be a member of the Grand Old Party.

I am standing here because I would like to interrogate Representative Gerry Mander, Jr., but I understand that he is still in the conference room with his father, Senator Gerry Mander, Sr.

am still trying to figure out how to respond to these squiggly , that seem to draw the congressional district map we have before us. The two Gerry Manders are trying to explain the shape of the 12th, 18th, and 4th Districts in the southwest, the 6th, 7th, and 13th Districts in the southeast, the 3d District in the northwest, and the 10th District in the northeast, which is now where my district is, stretching from the mid-State up to the New York border and over to the New Jersey border.

Mr. Speaker, I think the editorial boards in this State – and hopefully the State courts at some point – will see that while we have presently 21 Congressmen that are 11 Republican and 10 Democrats, and the fair thing to have done would have been to eliminate one of each party and make it a 10-and-9 congressional delegation, but even at worst we assume that the GOP having control of both chambers would eliminate two Democratic Congressmen and still leave themselves in a very healthy control of the Senate, but, Mr. Speaker, four seats had to be eliminated by the makers of this map, Senator Gerry Mander, Sr., and Representative Gerry Mander, Jr. We are now looking at a map that will contain 13 Republican districts and 6 Democratic districts in a Commonwealth that has a 500,000-plus Democratic majority. I do not know how that is possible without a lot of squiggly lines, and I have been looking at them all morning and all afternoon.

Mr. Speaker, I am rising to oppose this map, and I know how to count. I understand that this map is going to be adopted today. However, it is my hope that the many organizations that intend to eal this map will be successful and we will find ourselves back a conference room leaving the two Gerry Mander House and Senate members out.

Thank you.

REMARKS SUBMITTED FOR THE RECORD

Mr. WOJNAROSKI submitted the following remarks for the Legislative Journal:

Mr. Speaker, I rise to speak against this congressional reapportionment plan because the only plan I will vote for is a plan that will "retain" the integrity of the 12th Congressional District.

Since I was first elected to the House, I have been told time and again about the importance of seniority. Seniority gets you a seat at the table, it gets you on the right committees, and it gets you the right chairmanships. That is one of the reasons why I will be voting against this map, Mr. Speaker, because it destroys seniority and bipartisanship in favor of party politics.

This map severely weakens my Congressman, Jack Murtha, the dean of the Pennsylvania delegation. Congressman Murtha has 27 years of seniority in Congress, the most of anyone in our State and among the top 10 in the entire Congress. This map weakens Jack Murtha, and as a result, it hurts Cambria County and all of Pennsylvania, from Pittsburgh to Philadelphia and everywhere in between.

When I first came here, I voted to make sure that members with seniority receive committee chairmanships. I voted for seniority then and I am voting for seniority now. Preserving Jack Murtha's seniority is important to Cambria County and all of Pennsylvania.

Mr. Speaker, I urge my colleagues to vote against this bill. Thank you.

The SPEAKER. The Chair recognizes the gentleman, Mr. DeWeese.

Mr. DeWEESE. There is nothing but roguery to be found in villainous man. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

Mr. Perzel.

Mr. DeWeese, you have further remarks?

Mr. DeWEESE. Due to the very smooth engineering of my worthy counterpart, the majority leader, today's debate and this week's endeavor will be very short. But I would be remiss if I did not embrace the opportunity to make some observations about an event that only transpires once a decade.

Falstaff had it all on target. In fact, Falstaff could be amongst us today. There is roguery in this map; there is villainy in this map, and the people that will suffer are preeminently poor people and middle-class working families in our State.

As has been said but needs said again for the record, in the last decade Pennsylvania had 21 congressional Representatives. Because of a swing in population toward Georgia and Florida and Texas and California and the stability in our population, we only have 19.

Mr. Speaker, may I ask for some additional order? Mr. Speaker?

The SPEAKER. The gentleman will yield.

Conferences, please. Members, take your seats. Mr. DeWeese is the next to the last speaker. We will be out of here soon enough. Conference in the aisle, break up.

Mr. DeWeese.

Mr. DeWEESE. Thank you very much, Mr. Speaker.

But we are going to go from 21 seats to 19 seats, and although there are one-half a million more Democrats in Pennsylvania, Mr. Veon and myself and the men and women who serve with us on the Democratic side of the aisle embrace that French phrase of "realpolitik," and we believe that the Democrats are outnumbered in the House and the Senate, and we do not control the Governor's Mansion, so we thought it would be appropriate to sculpt

Pennsylvania's new reapportionment map of 19 members with 10 Republicans and 9 Democrats – 10 to 9 for our 19. Even our map was a bipartisan acquiescence to the realities of governing in the Assembly and in the Governor's Mansion, but that did not seem to be good enough. So what we have today, Mr. Speaker, is a map that could very conceivably render 14 Republican congressional Representatives and 5 Democrats – 14 to 5 – notwithstanding the fact that we have almost a half a million more Democrats in Pennsylvania than there are Republicans.

About 450 years before Christ, the Greek historian Thucidides said that the source of evil in government is a thirst for power from rapacious and ambitious passions. I look around the room and I see well-educated young people who went to Liberty University, who went to West Point, who went to Harvard, who studied Thucidides, but today their ambitious and rapacious passions are foreordained. They forget the lessons of history, and they will succumb to this map, which I believe is a betrayal and a deception and a debauchery. I think that in some flight of metaphorical fancy, it might even be referred to by a more extreme hyberbolist as political buggery, but not by me, of course. Even Genghis Khan and his pyramid of skulls was treachery that was in your face. This is more subtle; this is more politically sublime.

Your warrior elders are anticipating a 14-to-5 congressional victory, and some of my Democratic United States congressional brethren have acceded in this mischief. Long before the American Revolution, Jeremy Bentham promulgated a philosophy that was undergirded with the phrase "the greatest good for the greatest number." If you look at this map, the greatest good for the greatest number is contravened by Republican mapmakers. In fact, one of these, the 12th Congressional District, you do not even have to turn it upside down, just look at it like I am looking at it, and you will see a supine sea horse with its legs extended, a sore throat, and genitalia extending toward Wheeling, West Virginia. This is an obscenity of the first magnitude.

Now, I will admit that I have to turn Pennsylvania on its side, as the honorable majority leader and his deft technicians have done, to come up with a description of the 18th. My passion for Freud is such that I still do not have a good metaphor for this one, but it almost looks like an instrument of military aggression.

I had a wonderful Christmas. I fell in love, with a guy, named John Adams. David McCullough, David McCullough, David McCullough, who spoke at the Chamber of Commerce banquet with all of my wonderful Republican friends, was sharing that book with Mr. Perzel and Mr. Barley and the Governor and myself, Mr. Jubelirer and many, many others, and I took the time to read it over the week between Christmas and New Year's, and I was transfixed, and nothing affected me more than a comment by a man who preceded the American Revolution, Mr. James Harrington. He was a member of the House of Lords, but he was very enlightened, and he said that a representative Assembly – our congressional districts – a representative Assembly should be an exact portrait in miniature of the people represented – an exact portrait in miniature of the people represented.

Now, this colossal bastardization that you have foisted upon us, with the help of four of my congressional brethren, is allowing an honorable worthy from Johnstown to extend his sphere of influences to those rural townships in western Greene County. It takes days to traverse that long and winding path, and hopefully, hopefully, there will be mechanisms to redress this map in the near future. But I am having a hard time finding out how all of you inspired, decent, worthy, many of you Protestants, could go against your education, your upbringing, and allow something like this to take place. Gerrymandering has always been a reference dripping with pejorative, and you are acceding to one of the most aggressive gerrymandering phenomena in the United States of America. People who study these issues in Washington, DC, say amongst the 50 States, amongst the 50 States, this is the most rancid and coruscating manifestation of tragicomic arrogance and Republican aggrandizement, period.

Now, for those of you who think that good, solid Americanism went by the wayside with Abigail Adams, you may be right. But Abigail said something, and I think I saw her in the balcony a little bit ago; it might have been a specter. Not Arlen; Arlen is with Perzel. Abigail Adams made a wonderfully poignant reference that I think is apropos to this debate. She said, I am more and more convinced that man is a dangerous creature, and that power vested in many or vested in few is ever grasping. Mr. Speaker, this map, this gerrymandered monstrosity, is an ever-grasping effort on the part of the State Republican apparatus to change the way working families are represented in Pennsylvania.

Ever grasping brings me to my second of three points, and I again have to hearken to John Adams. I would recommend that every man and woman privileged to serve momentarily as a part of a representative government would embrace that book, but John Adams said that most people, most people in the late 18th century had about as much to say in their government as they did about the weather. That is about what Veon and DeWeese and the rest of us had to do with this map. We had about as much influence on this map as we had upon whether that golden orb would shine or be beclouded today. This representative Assembly has effectively cut out approximately half of its membership. This is the product of one party, and although there will be members of this caucus support the map, it will be for obvious and understandable political impulses.

Mr. Speaker, this is an ostentatious display of power by people in the State Senate, by the long, palpitating musculature of Richard Santorum and Melissa Hart and one as ambitious as Oliver Cromwell – Timothy Murphy in the State Senate.

I saw an article the other day in the Valley News Dispatch, Mr. Speaker, and it reminded me of the whole essence of this debate, especially when 500,000 Democrats are potentially disenfranchised by our efforts today. To quote from Dr. Timothy Murphy a day or two before Christmas, "I just heard we're going to go back into session and vote on something," Murphy said. "It looks like there's going to be a new district out here." Gee whiz. Golly. Holy mackerel. The queen bee of the South Hills pirouetting in Pittsburgh, all these machinations upwelling within his own Machiavellian design, and he tells the newspaper, we may be going back; there may be a new district. What disingenuousness, Dr. Murphy. Do not let us think that you were just casually standing by, that raw, naked ambition was not the fundamental core of this map. Mr. Murphy, wherever you are, you are responsible, in my view, for this map that looks like a supine sea horse with a sore throat, and you know the rest of the story. You were responsible for this dagger into the heart, this dagger into the heart of the sea horse. Anybody that sees this map should talk to Dr. Timothy Murphy of Pittsburgh, Pennsylvania. This is a depraved and farcical and avaricious map, and it is numbing to the eyes.

Whatever happened, whatever happened to all you v[illegible] educated young men and women? Do you not remember [illegible] that you learned in school, like "common good" and "public trust" and "checks and balances"? The refrain is probably in the negative. There is no common good here. There is no natural right. I would like you to unbosom yourself to this map, but I think that is to no avail. And speaking of unbosoming, I have a third and final point. You should like this one.

Mark Schweiker; Mark Schweiker. Veon remembers it very well. September 11 had just come and gone. The Honorable Governor of the Commonwealth, Thomas Ridge, is in the balcony of the United States Congress. A joint session is hearing the President of the United States summon our Governor to Washington. Within hours, to his infinite credit, the man we all like, enjoy, get a kick out of, and have a fraternal bond with, Mark Schweiker, calls Mike Veon, calls Bill DeWeese, and calls the leaders in the four caucuses, and I will never forget what he said, and that is why I still have hope for the sea horse and the dagger. He said, Bill, we are not Republicans, we are not Democrats – you guys can hear him now – we are not Democrats, we are not Republicans; we are Pennsylvanians. Well, Mark, if you have a jot or tittle of idealism in your governing ethos, you will not sign this bill; you will veto this proposal. You have a chance to be a bold dragoon. You have a chance to be like Jeb Stuart at Catlett's Station. You have a chance to ride hard, Mark Schweiker. These young politicians here will acquiesce to the merest breeze, to the merest whimsy, but you are a Governor. You are not running [illegible]. You have a chance to be audacious and intrepid and strong [illegible]adamantine and unyielding. You have a chance to make history. I doubt if it will happen, but—

Mr. Speaker, I have almost concluded my observations on this emanation from the legislative dungyard.

The SPEAKER. And you would not lie to us.

Mr. DeWEESE. I would not.

If this excrescence makes its way past our young Governor, then I am hopeful that a unanimous Supreme Court will find it worthy of condign censure, and if that eminently bipartisan series of jurists decides to ingratiate themselves to my worthy colleague, the majority leader, and his elders, then naturally I hope that the Federal authorities at the court will give it a severe verdict. This monstrous legislative afterbirth surely cannot be sustained in front of the bar of history.

The greatest Republican of them all, Mr. Speaker, spoke on a field in Pennsylvania in November of 1863, and his refrain still reverberates through all of history, and it should make a resonant sound in the heart of every true Republican, especially Republicans who grew up reading our history, who read about natural rights as they evolved in Philadelphia, who read about a balance of power, checks and balances, a man like Abraham Lincoln, who affirmed the immortal words "with malice toward none and charity for all."

Let us move forward. This is full of malice, it is devoid of charity, and it deserves a negative vote.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

I am reminded of the words of that same President when he said, he can compress the most words into the smallest idea of any man I ever met.

Mr. Perzel.

Mr. PERZEL. Thank you, Mr. Speaker.

I would apologize to the members for not having as much rest as the minority leader over the last couple days to be able to keep up with that.

I did want to remind him, though, that—

The SPEAKER. The gentleman will yield for a moment, please.

LEAVE OF ABSENCE

The SPEAKER. The Chair recognizes the gentleman, Mr. Veon, who requests that Mr. PRESTON be placed on leave for the balance of today's session. Without objection, leave will be granted. The Chair hears none.

CONSIDERATION OF SB 1200 CONTINUED

The SPEAKER. Mr. Perzel. I apologize.

Mr. PERZEL. But I thought for the sake of the members and for facts, Mr. Speaker, 400 years before the birth of Christ I believe the Greeks were in charge, not the Republican Party. So we have not been around doing things like that all those years. We did keep Greene County whole, also, Mr. Speaker. We made sure he was all right.

It is unfortunate, and I do not think anybody in this chamber wanted us to lose a congressional member despite the fact that we are going to lose two – we did not want to lose any – and we had to draw a map that reflected the fact that we would lose two congressional seats. It was mentioned by one of the members earlier about the fact in Philadelphia that the minority areas did not actually grow in minority representation, but that was because of involuntary retrogression, Mr. Speaker. Both of those seats had to pick up 125,000 people, so we had to go wherever we could to pick up those people. Our deviations on this map range from plus 9 to a minus 10 from the largest to the smallest of districts. That is a range of 19. And as I said, the districts had to grow from 565,000 10 years ago to 650,000 now, Mr. Speaker.

In our plans we were able to keep Congressmen Murtha and Mascara in separate districts in southwestern Pennsylvania. As a matter of fact, in a newspaper article, very recent, Murtha said, the compromise map being worked out will not be to my disadvantage; that was what I was worried about. So he supports the map that we have before us, Mr. Speaker. And yes, we did get other congressional members to be for the map. I would be a liar to say anything less than that, Mr. Speaker. But there are a couple of things.

We kept the two majority minority seats intact, and a minority can win either one of those two seats, Mr. Speaker. And this plan – and this is the most important part – this plan has seven districts with Republican registration majorities, seven with Democrat registration majorities, five where neither party has the majority. Of the five, Mr. Speaker, three have a GOP plurality and two have a Democrat plurality, Mr. Speaker. The voters in those districts will decide who gets elected in those congressional districts, Mr. Speaker. Not the people on the floor of this House, the voters of those congressional districts will make a decision as to who they elect.

So, Mr. Speaker, with that being in mind, this is as fair as we can be at this point in time, Mr. Speaker. I would ask the members for a positive vote on SB 1200. Thank you.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,

Will the House adopt the report of the committee of conference?

The SPEAKER. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS–132

Adolph	Fichter	Marsico	Ruffing
Allen	Fleagle	Mayernik	Sainato
Argall	Flick	McCall	Sather
Armstrong	Forcier	McGill	Schroder
Baker, J.	Gabig	McIlhattan	Schuler
Baker, M.	Gannon	McIlhinney	Semmel
Barley	Geist	McNaughton	Smith, S. H.
Barrar	Gordner	Melio	Steil
Bastian	Habay	Metcalfe	Stern
Birmelin	Harhart	Michlovic	Stetler
Bishop	Harper	Micozzie	Stevenson, R.
Blaum	Hasay	Miller, R.	Stevenson, T.
Browne	Hennessey	Miller, S.	Taylor, E. Z.
Burd	Herman	Mundy	Taylor, J.
Butkovitz	Hershey	Myers	Thomas
Civera	Hess	Nailor	Tulli
Clymer	Horsey	Nickol	Turzai
Cohen, L. I.	Jadlowiec	O'Brien	Vance
Coleman	James	Oliver	Wansacz
Cornell	Kaiser	Perzel	Washington
Corrigan	Keller	Petrarca	Waters
Costa	Kenney	Petrone	Watson
Creighton	Kirkland	Phillips	Williams, J.
Daily	Krebs	Pickett	Wilt
DeLuca	LaGrotta	Pippy	Wogan
Dermody	Laderer	Pistella	Wright, M.
DiGirolamo	Leh	Raymond	Youngblood
Diven	Lewis	Readshaw	Yudichak
Eachus	Mackereth	Rieger	Zimmerman
Egolf	Maher	Roebuck	Zug
Evans, D.	Maitland	Rohrer	
Evans, J.	Major	Ross	
Fairchild	Mann	Rubley	Ryan, Speaker
Feese	Markosek		

NAYS–59

Bard	Dailey	Lescovitz	Stairs
Belardi	DeWeese	Levdansky	Steelman
Belfanti	Donatucci	Lucyk	Sturla
Benninghoff	Frankel	Lynch	Surra
Buxton	Freeman	Manderino	Tangretti
Caltagirone	George	McGeehan	Tigue
Cappelli	Godshall	Pallone	Travaglio
Casorio	Grucela	Roberts	Trich
Cawley	Gruitza	Robinson	Veon
Clark	Haluska	Samuelson	Vitali
Cohen, M.	Hanna	Santoni	Walko
Colafella	Harhai	Scrimenti	Wojnaroski
Coy	Hutchinson	Shaner	Wright, G.
Curry	Laughlin	Solobay	Yewcic
Dailey	Lawless	Staback	

NOT VOTING–0

EXCUSED–11

Belko-Jones	Josephs	Rooney	Smitmaster
Boyes	Preston	Saylor	Trello
Cruz	Renard	Smith, B.	

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the report of the committee of conference was adopted.

Ordered, That the clerk inform the Senate accordingly.

BILL SIGNED BY SPEAKER

Bill numbered and entitled as follows having been prepared for presentation to the Governor, and the same being correct, the title was publicly read as follows:

SB 1200, PN 1645

An Act to apportion the Commonwealth of Pennsylvania into congressional districts in conformity with constitutional requirements; providing for the nomination and election of Congressmen; and requiring publication of notice of the establishment of congressional districts following the Federal decennial census.

Whereupon, the Speaker, in the presence of the House, signed the same.

CONDOLENCE RESOLUTION

The SPEAKER. Members, please stay on the floor for a moment. A former member of the House recently died, a very fine member, Jim Barber from the city of Philadelphia. Please take your seats. The condolence resolution is about to be read.

The Sergeants at Arms will close the doors of the House.

Please take your seats. May I have your attention, please?

The clerk will read the resolution.

The following resolution was read:

COMMONWEALTH OF PENNSYLVANIA
THE HOUSE OF REPRESENTATIVES

RESOLUTION

WHEREAS, The House of Representatives of Pennsylvania notes with deepest regrets that the Honorable James D. Barber, a former member of the House who served the 190th Legislative District, passed away December 23, 2001, at the age of eighty-one; and

WHEREAS, Mr. Barber was born in Columbia, South Carolina. He relocated to Philadelphia as a teenager and then returned to South Carolina to attend Allen University. He began his political career as a Committeeman in 1947 and was elected to the House of Representatives of Pennsylvania in 1968. He was reelected for eight consecutive terms. Mr. Barber served as an elective board member of the NAACP; as the first Chairman of the Pennsylvania Legislative Black Caucus; as Chairman of the House Democratic Health and Welfare Committee; and as a member of the Governor's Task Force for Special Needs Children. He was also Vice Chairman of the Philadelphia Black Elected Officials and a member of the Board of Trustees of the Philadelphia Prison Board. Additionally, Mr. Barber was a former member of the Monumental Baptist Church and in 1998, he joined the White Rock Baptist Church. Prior to his political career, he was employed at the Philadelphia Naval Yard and pursued a business career by opening a restaurant and a number of barber shops in the West Philadelphia area; now therefore be it

RESOLVED, That the House of Representatives of the Commonwealth of Pennsylvania note with great sadness the passing of the Honorable James David Barber, who served his community and this Commonwealth in a way most befitting the highest ideals of public

service; extend heartfelt condolences to his daughter, Diane Hannah; and grandchildren, and be it further

RESOLVED, That a copy of this resolution, sponsored by the Honorable Michael Horsey, be transmitted to the family of the Honorable James David Barber.

Matthew J. Ryan
Speaker of the House
ATTEST:
Ted Mazia
Chief Clerk of the House

On the question,
Will the House adopt the resolution?

The SPEAKER. Those in favor of the resolution will rise and remain standing as a mark of respect for a former member. Guests will also please rise.

(Whereupon, the members of the House and all visitors stood in a moment of silence in solemn respect to the memory of the Honorable James D. Barber.)

The SPEAKER. The resolution has been unanimously adopted.

The Sergeants at Arms will open the doors of the House.

DEMOCRATIC CAUCUS

The SPEAKER. The gentleman, Mr. Cohen, is recognized for the purpose of making an announcement.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, for those members who are in Harrisburg, there will be a meeting in the Democratic caucus room to go over what we know about the schedule in January at 10 a.m. tomorrow morning.

The SPEAKER. The Chair advises the members that there will be a nonvoting session tomorrow.

REMARKS SUBMITTED FOR THE RECORD

The SPEAKER. Mr. Solobay, I understand you have remarks for the record.

Mr. SOLOBAY. Thank you, Mr. Speaker.

I have remarks to submit for the record on SB 1200. Thank you.

The SPEAKER. The gentleman will please send them forward.

Mr. SOLOBAY submitted the following remarks for the Legislative Journal:

In my experience, things look better if you are positive. Solutions are easier if you think outside the box.

Driving down the turnpike this morning, I had about 4 hours to think of something positive that could come out of this plan.

In 4 hours of positive thinking, I came up with nothing. Not one good thing can come from this plan.

When we debated the plan a few weeks ago, our colleague, e Daley, referred to the plan as "chipped chopped ham." Now it is minced ham. Not only will this decimate the southwestern counties, but it splits counties that have never before been split. It splits communities and townships in Washington County and even splits wards in voting precincts. That does not make any sense!

The bipartisan unity we enjoyed so briefly following the horrible events of September 11 has died a quick death. Its tombstone will be this plan.

I cannot vote for this plan. I urge everyone, if you are truly dedicated and committed to fair and proper representation for all Pennsylvanians, to vote against this plan.

VOTE CORRECTION

The SPEAKER. The Chair recognizes the gentleman, Mr. Trich, who asks that the record reflect that his vote on SB 406 on December 12, 2001, should have been in the affirmative. The remarks of the gentleman will be spread on the record.

REMARKS SUBMITTED FOR THE RECORD

The SPEAKER. Mr. Costa.

Mr. COSTA. Thank you, Mr. Speaker.

I would like to submit comments for the record, please, on SB 1200.

The SPEAKER. The Chair thanks the gentleman. Send the remarks to the desk.

Mr. COSTA submitted the following remarks for the Legislative Journal:

Mr. Speaker, over the past few months I have seen several versions of congressional redistricting maps. In my opinion, they all had their own pros and cons. Unfortunately, this version splits my municipality, Wilkins Township, by putting one voting district (ward 2 district 2, where I live) in the 14th Congressional District and the other six voting districts into the 18th Congressional District. My neighbors who live down the street from me and who vote at the same polling place as I do will be voting for and will be represented by a different Congressperson than I will. My fear is that this will cause confusion for not only the voters but also the candidates. If I had input into this map, I would have liked to make municipalities whole or at least keep municipal wards whole. Unfortunately, I was not selected to be on the conference committee.

I realize that we have a responsibility to the people of this Commonwealth to have the 19 congressional districts drawn in a timely manner. I also realize that it is practically impossible to make everybody happy. Therefore, I will reluctantly vote for SB 1200.

Thank you, Mr. Speaker.

REMARKS SUBMITTED FOR THE RECORD

Ms. WASHINGTON submitted the following remarks for the Legislative Journal:

The latest figures for year 2000 from the U.S. Census Bureau indicate that the Commonwealth of Pennsylvania is populated by 12,281,054 citizens, 1,224,612 of which are of black and/or African-American descent (12 percent of the State's population). Hispanics who reported their race as black, either alone or in combination with other races, are included in the number for blacks. Of the 1,224,612 African Americans said to reside in Pennsylvania, one-half (655,824) live within the confines of Philadelphia County, while 568,788 African Americans are dispersed throughout the remaining 66 of Pennsylvania's 67 counties. After Philadelphia County, with its 655,824 African-American residents, the next 10 counties in terms of resident population of African Americans are Allegheny County (159,058); Delaware (79,981); Montgomery (55,969); Dauphin (42,580); Chester (27,040); Bucks (19,495); Erie (17,202); Berks (13,778); and Lancaster (12,993). These figures, in accordance with

Public Law 94-117, are used to draw boundaries for legislative districts (redistricting) and congressional districts (reapportionment).

African Americans in Pennsylvania do not have "proportional" representation in either the Senate of Pennsylvania or the Pennsylvania House of Representatives. Out of a total of 50 Senators, Pennsylvania seats three from minority districts in the Philadelphia area. If 12 percent of the African-American population were proportionally represented in the Pennsylvania Senate, there would be six sitting minority Senators. Similarly, there are 16 sitting minority members in the Pennsylvania House of Representatives. If 12 percent of the African-American population were represented in the membership of the body of the House, they would hold at least 24 of the 203 House seats. Of the 16 minority members of the Pennsylvania House of Representatives, 2 represent citizens from Allegheny County, 1 represents citizens from Delaware County, and the remaining 13 represent citizens from Philadelphia County. In effect, the remaining African-American citizens dispersed throughout Pennsylvania have no direct representation in either legislative body. If it were not for the advocacy of the PA Legislative Black Caucus, the 5,189 African Americans living in Lycoming County, the 59 African Americans living in Jefferson County, the 3,544 African Americans living in Centre County, et cetera, would have no legislative "voice" in Pennsylvania at all.

According to law, each of Pennsylvania's 203 legislative districts is to have approximately 50,000 individuals residing in each. With recent population shifts since the last census, we are told that the areas with a growing concentration of minority voters will not gain legislative representation, while the growing areas of the State with concentrations of majority voters will gain legislative representation.

In most of Pennsylvania, the legislative redistricting process and the congressional reapportionment process have little significance or effect on populations of color because the numbers, in comparison to the numbers from the 1990 census, have neither risen nor fallen significantly enough to have an impact one way or another. Thus, in my opinion, the processes are a "non-issue" in every one of Pennsylvania's counties with the exception of Philadelphia County, since people of color lack representation anyway.

Philadelphia County, Pennsylvania, ranks number four in the United States in total population of black and/or African-American people. According to U.S. census figures and information provided for purposes of congressional reapportionment and legislative redistricting, over the last 10 years, more people who classify themselves as white (142,572) have left Philadelphia, thus increasing the minority population, as the city's black, non-Hispanic population increased by 32,314 and its Latino population increased by 39,735. Accordingly, logic seems to follow that instead of the two "minority" congressional districts that are seated in Philadelphia, a third minority district should be added. However, it is my understanding that such a scenario has never been given serious consideration by members of Pennsylvania's bipartisan Reapportionment Commission. It is interesting to note here that of the two "minority" congressional seats located in Philadelphia, only one is held by a person of color, the Honorable Chaka Fattah. The other is held (coincidentally?) by the Honorable Bob Brady, who is also the powerful chief of the Philadelphia Democratic Party. Mr. Brady currently serves as the only majority member in the United States Congress who represents a minority district.

Getting back to the issue of legislative redistricting, it appears that the final plan, particularly in the case of Philadelphia, has been drawn in such a fashion as to dilute the voting strength of minority populations in certain districts and group together communities that have little or nothing in common, and splits communities that share factors of commonality such as ethnicity and certain geographical boundaries. Although the Latino population has grown in such number as to dictate a second legislative seat and increased representation on Capitol Hill, if the current plan is approved and put into place, such representation will not be forthcoming in the newly configured districts. This appears to be a violation of the equal protection clause of the 14th Amendment to the Constitution of the United States. When looked at realistically and not through lenses tainted by racism, politicism, and favoritism, the mathematical calculations show that at least 60 percent of legislative seats will go to 45 percent of the (white) population.

Based on my reading and research into the issue of Pennsylvania's current legislative redistricting and congressional reapportionment process, I would conclude that in Pennsylvania, there are no positive aspects to the 2001 redistricting and reapportionment plans as they relate to African-American and other minority people. The current plan will lessen representation and a strong voice for the Commonwealth's citizens of color, at least for the next 10 years, if not beyond. At a time in Pennsylvania when, according to the PA Human Relations Commission, hate crimes are on the rise and the Ku Klux Klan is actively and aggressively establishing a strong presence in northern Pennsylvania, the current plan bodes ill for citizens of color in the Commonwealth.

It is indeed a travesty and gross injustice that instead of growing, a design has been agreed to and put into place to shrink African-American political power and representation in the nation's fifth largest city – the city where the quest for "liberty and justice for all" is said to have begun.

I would like to thank my staff and Cindie Watkins for their assistance with the research.

BILLS REREPORTED FROM COMMITTEE

HB 50, PN 36 By Rep. BARLEY

An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, further providing for per capita taxes.

APPROPRIATIONS.

SB 400, PN 1466 By Rep. BARLEY

An Act amending the act of October 10, 1975 (P.L.383, No.110), known as the Physical Therapy Practice Act, further providing for the State Board of Physical Therapy; providing for a certificate of authorization to practice physical therapy without the required referral; requiring professional liability insurance coverage and continuing education; and providing penalties.

APPROPRIATIONS.

BILLS AND RESOLUTIONS PASSED OVER

The SPEAKER. Without objection, all remaining bills and resolutions on today's calendar will be passed over. The Chair hears no objection.

ADJOURNMENT

The SPEAKER. Does the majority leader or minority leader have any further business?

Hearing none, the Chair recognizes the gentleman, Mr. Cohen.

Mr. COHEN. Mr. Speaker, I move that this House do now adjourn until Friday, January 4, 2002, at 10 a.m., e.s.t., unless sooner recalled by the Chair.

On the question,
Will the House agree to the motion?

Motion was agreed to, and at 5:18 p.m., e.s.t., the House adjourned.

DEFENDANT'S EXHIBIT 5

COMMONWEALTH OF PENNSYLVANIA

Legislative Journal

THURSDAY, JANUARY 3, 2002

SESSION OF 2002 186TH OF THE GENERAL ASSEMBLY No. 2

SENATE

THURSDAY, January 3, 2002

The Senate met at 1 p.m., Eastern Standard Time

The PRESIDENT (Lieutenant Governor Robert C. Jubelirer) in the Chair.

PRAYER

The following prayer was offered by the Secretary of the Senate, Hon. MARK R. CORRIGAN:

Let us pray.

Heavenly Father, be gracious to us and bless us with a measure of Your spirit this day. As the Senate gathers, may it be with confidence, hope, and faith in You and each other, that these, the servants of the people, may do with excellence the work to which they have been called. And when this day is done, may their accomplishments be pleasing in Your sight. Amen.

JOURNAL APPROVED

The PRESIDENT. A quorum of the Senate being present, the Clerk will read the Journal of the preceding Session of January 1, 2002.

The Clerk proceeded to read the Journal of the preceding Session, when, on motion of Senator BRIGHTBILL, and agreed to by voice vote, further reading was dispensed with and the Journal was approved.

COMMUNICATIONS FROM THE GOVERNOR

RECALL COMMUNICATIONS LAID ON THE TABLE

The PRESIDENT laid before the Senate the following communications in writing from His Excellency, the Governor of the Commonwealth, which were read as follows and laid on the table:

MEMBER OF THE PENNSYLVANIA CANCER CONTROL, PREVENTION AND RESEARCH ADVISORY BOARD

January 2, 2002

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated July 19, 2001 for the appointment of Joel S Nournoff, M.D., 238 Lloyd Lane, Wynnewood 19096, Montgomery County, Seventeenth Senatorial District, as a member of the Pennsylvania Cancer Control, Prevention and Research Advisory Board, to serve for a term of four years and until his successor is appointed and qualified, vice Christine E. Szarka, M.D., Pennlyn, whose term expired.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

CONTROLLER, MONROE COUNTY

January 2, 2002

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 31, 2001 for the appointment of Marlo A. Merhige, R.R. 1, Box 333, Tannersville 18372, Monroe County, Twenty-ninth Senatorial District, as Controller, in and for the County of Monroe, to serve until the first Monday of January 2002, vice The Honorable Kelly Lewis, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

CORONER, BUTLER COUNTY

January 2, 2002

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 31, 2001 for the appointment of William F. Young, III, Box 223 863 Halston Road, West Sunbury 16001, Butler County, Twenty-first Senatorial District, as Coroner, in and for the County of Butler, to serve until the first Monday of January 2002, vice William F. Young, Jr., resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

JUDGE, COURT OF COMMON PLEAS, NORTHAMPTON COUNTY

January 2, 2002

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated June 21, 2001 for the appointment of Edward G. Smith, Esquire, 5522 Kesslersville Road, Easton 18040, Northampton County, Eighteenth Senatorial District, as Judge of the Court of Common Pleas of Northampton County, to serve until the first Monday of January 2002, vice The Honorable James C. Hogan, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

SHERIFF, POTTER COUNTY

January 2, 2002

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 30, 2001 for the appointment of Kenneth G. Sauley, 215 Earl Road, Sabinsville 16943, Potter County, Twenty-fifth Senatorial District, as Sheriff, in and for the County of Potter, to serve until the first Monday of January 2004, vice Dale I. Cogley, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

SHERIFF, TIOGA COUNTY

January 2, 2002

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 29, 2001 for the appointment of John L. Perry, 25 Dantz Run Road, Wellsboro 16901, Tioga County, Twenty-third Senatorial District, as Sheriff, in and for the County of Tioga, to serve until the first Monday of January 2002, vice Lamar G. Green, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

TREASURER, BRADFORD COUNTY

January 3, 2002

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 31, 2001 for the appointment of Rebecca A. Clark, RR 1, Box 165, Towanda 18848, Bradford County, Twenty-third Senatorial District, as Treasurer, in and for the County of Bradford, to serve until the first Monday of January 2002, vice Nancy Schrader, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

HOUSE MESSAGE

HOUSE INSISTS UPON ITS AMENDMENTS NONCONCURRED IN BY THE SENATE TO SB 1200, AND APPOINTS COMMITTEE OF CONFERENCE

The Clerk of the House of Representatives informed the Senate that the House insists upon its amendments nonconcurred in by the Senate to **SB 1200**, and has appointed Messrs. S.H. SMITH, BARLEY, and VEON as a Committee of Conference to confer with a similar committee of the Senate, already appointed, to consider the differences existing between the two houses in relation to said bill.

BILL INTRODUCED AND REFERRED

The PRESIDENT laid before the Senate the following Senate Bill numbered, entitled, and referred as follows, which was read by the Clerk:

January 2, 2002

Senators O'PAKE, MELLOW, MUSTO, SCHWARTZ, LOGAN, COSTA, LAVALLE, ERICKSON, BOSCOLA, STOUT, WOZNIAK and KUKOVICH presented to the Chair **SB 1239**, entitled:

An Act prohibiting school districts from levying or collecting real property taxes after June 30, 2004.

Which was committed to the Committee on FINANCE, January 2, 2002.

REPORT OF COMMITTEE OF CONFERENCE SUBMITTED

Senator BRIGHTBILL submitted the Report of the Committee of Conference on **SB 1200**, which was placed on the Calendar.

DISCHARGE PETITIONS

The PRESIDENT laid before the Senate the following communications, which were read by the Clerk as follows:

January 3, 2002

A PETITION

To place before the Senate the nomination of Carol R. Brown, as a member of the Council of the Arts.

TO: The President Officer of the Senate:

WE, The undersigned members of the Senate, pursuant to section 8 (b) of Article IV of the Constitution of Pennsylvania, do hereby request that you place the nomination of Carol R. Brown, as a member of the Council of the Arts, before the entire Senate body for a vote, the nomination not having been voted upon within 15 legislative days:

Raphael J. Musto
Robert J. Mellow
Michael A. O'Pake
Jack Wagner
Richard A. Kasunic
J. Barry Stout
Vincent J. Fumo

January 3, 2002

A PETITION

To place before the Senate the nomination of Gwendolyn M. White, as a member of the State Board of Dentistry.

TO: The President Officer of the Senate:

WE, The undersigned members of the Senate, pursuant to section 8 (b) of Article IV of the Constitution of Pennsylvania, do hereby request that you place the nomination of Gwendolyn M. White, as a member of the State Board of Dentistry, before the entire Senate body for a vote, the nomination not having been voted upon within 15 legislative days:

Raphael J. Musto
Robert J. Mellow
Michael A. O'Pake
Jack Wagner
Richard A. Kasunic
J. Barry Stout
Vincent J. Fumo

January 3, 2002

A PETITION

To place before the Senate the nomination of The Honorable Kim Pizzingrilli, as a member of the Public Utility Commission.

TO: The President Officer of the Senate:

WE, The undersigned members of the Senate, pursuant to section 8 (b) of Article IV of the Constitution of Pennsylvania, do hereby request that you place the nomination of The Honorable Kim Pizzingrilli, as a member of the Public Utility Commission, before the entire Senate body for a vote, the nomination not having been voted upon within 15 legislative days:

Raphael J. Musto
Robert J. Mellow
Michael A. O'Pake
Jack Wagner
Richard A. Kasunic
J. Barry Stout
Vincent J. Fumo

The PRESIDENT. The communications will be laid on the table.

LEGISLATIVE LEAVES

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, I ask for legislative leaves for Senator Bell and Senator Piccola.

The PRESIDENT. Senator Brightbill requests legislative leaves for Senator Bell and Senator Piccola. Without objection, the leaves will be granted.

The Chair recognizes the gentleman from Berks, Senator O'Pake.

Senator O'PAKE. Mr. President, I request legislative leaves for Senator Bodack and Senator Fumo, and a temporary Capitol leave for Senator Anthony Williams.

The PRESIDENT. Senator O'Pake requests legislative leaves for Senator Bodack and Senator Fumo, and a temporary Capitol leave for Senator Anthony Williams. Without objection, those leaves will be granted.

SPECIAL ORDER OF BUSINESS
SUPPLEMENTAL CALENDAR No. 1

REPORT OF COMMITTEE OF CONFERENCE

REPORT ADOPTED

SB 1200 (Pr. No. 1645) – The Senate proceeded to consideration of the bill entitled:

An Act to apportion the Commonwealth of Pennsylvania into congressional districts in conformity with constitutional requirements; providing for the nomination and election of Congressmen; and requiring publication of notice of the establishment of congressional districts following the Federal decennial census.

Senator BRIGHTBILL. Mr. President, I move that the Senate adopt the Report of the Committee of Conference on Senate Bill No. 1200.

On the question,
Will the Senate agree to the motion?

The PRESIDENT. The Chair recognizes the gentleman from Berks, Senator O'Pake.

Senator O'PAKE. Mr. President, thank you for the opportunity to speak in opposition to this plan, and I will concentrate my remarks on the impact of this plan on the 6th Congressional District, presently constituting the counties of Berks, Schuylkill, and some of the smaller parts of adjoining counties.

Mr. President, it is a shame today that the leaders of the Republican Party are trying to use their control of State government to punish the people of Berks County by chopping us up into three small pieces. For 40 years, Democrats in the State legislature have kept Berks County's identity intact. In fact, we had to go to court 10 years ago to do that. Now the Republican Majority want to have pieces of Berks County represented by Congressmen from Lancaster, Chester, and Dauphin Counties so that Berks County, one of the largest and fastest growing counties in the State, is relegated to the tail wagging the dog, and you know what that means. When we try to compete for Federal dollars to help local taxpayers with better roads, affordable housing, more police, economic development and jobs, and other federally funded projects, Berks County will play second or third or fourth fiddle to counties that have their own Congressmen. Under this policy of divide and conquer, Berks County will be divided, and the people of Berks County will be conquered.

I strongly oppose this plan. It is worse than the one that we heard about last week, and I hope that the people of Berks County will pay attention to who is responsible for this massacre.

Thank you.

The PRESIDENT. The Chair recognizes the gentlewoman from Philadelphia, Senator Tartaglione.

Senator TARTAGLIONE. Mr. President, in all good conscience, I cannot vote for the congressional redistricting plan

that we have before us today. In fact, Mr. President, I am deeply disappointed we are even considering Senate Bill No. 1200 in its present form. The people of Pennsylvania are not naive, Mr. President, and I am sure that they expect a certain degree of partisan political posturing from this body. However, it is unreasonable that they be expected to tolerate the level of partisanship that is contained in Senate Bill No. 1200.

Mr. President, in no uncertain terms, Senate Bill No. 1200 is an attempt to compel the residents of this State, who are primarily registered Democrat voters, to be represented in Congress by a delegation that is dominated by Republicans. I use the term "represented" freely here because Senate Bill No. 1200 creates a scenario in which genuine representation is, at best, minimal. This poorly conceived piece of legislation would eliminate or merge districts in which experienced and dedicated congressional representatives have served all constituents, Democrats and Republicans alike, with unfailing excellence. Because of their experience and their performance, many of our congressional delegation have earned coveted influential leadership positions in Congress, a highly-prized status that creates even more value for their representative districts and the entire Commonwealth.

In the private sector, Mr. President, these people would be far too valuable to be replaced as casually as proposed in Senate Bill No. 1200. In the private sector, high-powered headhunters would spare no effort or expense to compete for their services. However, in the fantasy world of partisan politics, such proven and capable leaders are mere targets for termination for the sake of political opportunism.

Mr. President, this calloused and biased plan violates all basic tenets of representative democracy and the spirit of redistricting itself. To say that I am disheartened by the blatant disregard for fairness in this process would be an understatement. Why are only Democrats losing seats? Why are only incumbent Democrats being forced to run against each other in newly-crafted districts? Why do we not see Congressman Gekas running against Congressman Pitts? Why not Congressman Peterson running against freshman Congressman Shuster? Why are we creating two congressional districts for two sitting Republican State Senators at the expense of two veteran Democratic Congressmen?

Mr. President, I am particularly disappointed that Senate Bill No. 1200 creates one of those districts in an attempt to unseat a Democratic Congressman from the southeast. Senate Bill No. 1200 would force my Congressman, Congressman Borski, into a primary election with Congressman Hoeffel, and the winner will have to compete in a district that would favor a Republican challenger. Congressman Borski has served the people of Pennsylvania admirably for the past 19 years, and our State stands to lose an effective, respected veteran leader. That, Mr. President, is unfortunate for all of us.

Senate Bill No. 1200 is a bad joke on Pennsylvanians, and no one is laughing. I have yet to see one editorial that condones the tactics or underlying intent of this legislation. The Daily News from Delaware County writes, "The name of the game for Republicans is reinforcing the seats controlled by Republicans to strengthen the ability of Republicans to control Congress." And the Washington Post describes the plan as "...the most extreme case study of party vengeance this year."

Senate Bill No. 1200 is about control, not governing or democracy. Is it democracy when a duly-elected official who has–

POINT OF ORDER

Senator MELLOW. Mr. President–excuse me, Senator–Mr. President, I rise for a point of order.

The PRESIDENT. The gentleman will state his point.

Senator MELLOW. Mr. President, this is a very important issue. It is something that will determine the congressional makeup of the Commonwealth of Pennsylvania for the next 10 years, and if individuals care to choose to discuss their own private discussions, would you please have them take it off the floor so those of us who want to listen to the debate will have an opportunity to hear exactly what the speaker is saying. I would appreciate that.

The PRESIDENT. The Chair asks that all Members kindly respect the floor, and the Chair apologizes. I did not hear the disruption as perhaps you did from down there, but at least I ask that all Members kindly take all of their sidebar conferences off the floor on both sides of the aisle in the entire Senate. Senator Tartaglione deserves to be heard, and the Chair agrees with Senator Mellow.

Senator Tartaglione, you have the floor.

Senator TARTAGLIONE. Thank you, Mr. President.

Senate Bill No. 1200 is about control, not governing or democracy. Is it democracy when a duly-elected official, who has faithfully served in the best interests of you, your family, your neighbors, your businesses and communities, is arrogantly cast out into the street simply because he or she had the nerve to be a registered Democrat?

Mr. President, I have the privilege of serving on the Senate Committee on State Government, and in preparation for the inevitable task of redistricting, we recently held hearings in Allentown, Harrisburg, and Pittsburgh. The purpose of these hearings, Mr. President, was to solicit input and direction as how to best accomplish the task of redistricting. Time and again the one refrain we heard from each area was to retain the commonality of interest of existing congressional districts. Citizens who testified at these hearings asked that we preserve their districts because they made sense. What they feared was that reapportionment would carve them out of their current district and insert them into a district with divergent needs and priorities.

Mr. President, with the commonality of interest removed, citizens living in the victimized area dread a new era of either misrepresentation or nonrepresentation. With the plan we have before us today, those worst fears have been realized, and the stated wishes of our citizens have been rudely ignored. The only commonality of interest present in Senate Bill No. 1200 is the Republican Party's common interest to accomplish through legislation what they fear they cannot rightfully earn at the ballot box.

Senate Bill No. 1200 is not rush legislation that was thrown together to meet a tight deadline. It is far more sinister. It is a crafted master plan to dissect Pennsylvania in order to isolate or submerge current Democratic districts. It does not have to be this way, Mr. President. In the past year, other States have taken on reapportionment and have approved plans that either maintain the status quo or effect minimal changes.

According to an article in last week's Philadelphia Inquirer, the reason for the assault on Pennsylvania's districts is that Republicans are trying to gain all the seats they anticipated but did not receive nationwide. Mr. President, they did not get what they wanted in States such as Texas and Georgia, so Pennsylvania has become the Republican focal point for making up lost ground. Never mind the socioeconomic makeup of the Commonwealth, never mind the needs and priorities of individual regions and districts, never mind Pennsylvania's overwhelmingly Democratic voting enrollment. What we are presented with here is a bill in which lone beneficiaries are elected Republicans, and those who aspire to such status. Everyone else is just a victim.

Mr. President, Senate Bill No. 1200 must not stand in its present form, and I ask that the Senate reject this bill in its current form. In the end, Senate Bill No. 1200, or any reapportionment plan, should pass into law only if it accurately reflects the demographics of this Commonwealth and the wishes of its citizens.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentlewoman from Montgomery, Senator Constance Williams.

Senator C. WILLIAMS. Mr. President, many of the disputes that arise between the two parties on this floor arise as a result of philosophical differences or conflicting points of view, but the congressional reapportionment plan before us today represents neither principle nor conviction; this plan represents pure political arrogance. The Majority party stands here today willing to sacrifice Pennsylvania's prestige and influence in Washington in order to carve out a bigger piece of the political pie for its own Members, willing to pit two strong, experienced public servants against one another to replace one with a less effective freshman with no seniority and no influence.

Make no mistake, Mr. President, it is not the Minority Caucus of this Chamber nor the Democratic Party of this Commonwealth who will be damaged by this sham of a proposal. All Pennsylvanians will suffer. Many of my own constituents will be among the hardest hit. Rather than have one representative in Congress to represent their interests as a unified community, they will be parceled out among a half- dozen representatives, none of whom represents the community as a whole. The voices of 800,000 Montgomery County residents will effectively be silenced as the bonds between municipalities are severed.

It is no surprise that the Majority party should want to divide and conquer Montgomery County, as they are fearful of their dwindling support. But the plan before us guarantees the loss of one of Pennsylvania's two most valuable representatives in Congress. It guarantees that Pennsylvania will lose out in competition for Federal funds and resources. It guarantees that the strides that we have made as a Commonwealth will be sabotaged. Two experienced, dedicated representatives will be pitted against one another, with the loss of one of them assured.

Mr. President, how much of our Commonwealth's prestige and influence is the Majority party willing to throw away in the name of partisanship? The loss of either Congressman Bob Borski or Congressman Joe Hoeffel will be devastating not only to their own constituencies but to the State as a whole. Congressman Hoeffel has brought more than $50 million in Federal resources to Montgomery County in his first term alone, including funding for school districts, the Norristown Community Health Center, SEPTA, and public school teacher training at area colleges. He has been a tireless advocate for senior citizens, introducing legislation to create a Medicare prescription drug benefit, and serving as a member of the Congressional Task Force on Social Security. He has made public education a top priority. Congressman Hoeffel's Education Reinvestment Act would increase Federal investment in public education by $35 billion over the next 5 years, the largest single increase in the history of the Elementary and Secondary Education Act. He successfully fought to restore a million dollars scheduled to be cut from remedial education for Montgomery County schools.

Congressman Borski, meanwhile, is the third-ranking Democrat on the House Committee on Transportation and Infrastructure, and the ranking member of the Highways and Transit Subcommittee. His reelection would put him in a position to help write the reauthorization of the Surface Transportation Act, better known as T-21. T-21's significance to economic development in Pennsylvania and Montgomery County is impossible to overestimate. For every dollar Pennsylvanian's repay in gas taxes, the Commonwealth receives $1.22. No other State has benefitted more than Pennsylvania, but without Congressman Borski in his senior position on the Transportation Infrastructure Committee, Pennsylvania cannot be expected to compete with the more powerful States during the T-21 reauthorization process. Mr. President, Pennsylvanians are privileged to have such dedicated representatives fighting for them in Washington. The reapportionment plan before us today makes a mockery of the very concept of public service.

Finally, Mr. President, I find it appalling that the Senate leadership is also willing to call a Special Session in order to pad the political fortunes of the Majority party while the fate of the health care system in Pennsylvania is allowed to teeter on the brink of disaster until the end of this month. Many doctors in Pennsylvania are at this moment unable to practice because they cannot get malpractice insurance. Unless we are able to send a message that political dealmaking is more important than our citizens' access to medical care, I suggest that Governor Schweiker call an immediate Special Session of the legislature to deal with the malpractice insurance crisis.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentlewoman from Philadelphia, Senator Schwartz.

Senator SCHWARTZ. Mr. President, I would like to add my comments briefly to my deep concerns about this plan that we are voting on, the redistricting plan. It is very clear that it is more a political plan, with the interests of one political party over another, than an interest in representing the people of the

Commonwealth in Washington. I represent a part of Montgomery County, as you know, and Montgomery County, as we might have suspected because of its population, might be divided into several, one or two, maybe even three congressional districts, but it has been divided into six congressional districts. And while it has been reported in the paper, and I understand that newspaper reports are not always accurate, the Majority party said that they believe Pennsylvanians will be best represented when represented by Republicans. Well, how much more partisan can you get? And while this is again a very partisan process, the fact is that the people of Pennsylvania will be best represented when they can come together in some commonality and have their areas represented and be able to demonstrate some force in voting for their representatives. And the kind of dividing up of geographic areas, as it has been, into so many little pieces does not bode well for people who have been a very strong and important part of the Commonwealth being able to maintain that kind of continuity in who represents them in Washington.

So, when you see a plan like this that is far more about partisan politics than it is about the common interests of the people of Pennsylvania, I have to rise and object, and that is why I do. There are better ways to do this. There might have been a greater opportunity for some discussion about how we might draw the lines. It was going to be a difficult process because we were losing two seats, but it need not have been quite so partisan, quite so directed in believing that, in fact, this State ought to be represented by one party, and not by the kind of dynamic political process that certainly I personally believe in.

So while I hope that, in fact, the expectations of the Majority party are not realized, that there is still going to be a competitive process where fine candidates rise to the occasion to take on what will be much less competitive districts, I hope that they do and I hope the people come out and vote in force in any case. My concern is that they will be discouraged, they will feel divided, they will feel divided and conquered. That is not what we want when we do redistricting. We should instead encourage people to believe in the process and get out and want to vote for their representative in Washington. This plan does not do well in helping people to understand that process and have faith in that process. I will certainly be voting "no," as I believe many of my colleagues will be, and again, I think this represents a real disappointment, not for me personally, but for the people of Pennsylvania in not being able to trust the Majority party, which does control both Chambers and the Governor's Office, in truly taking the best interests of Pennsylvanians into account in setting this plan forward. So I will vote "no," and I certainly would encourage all my colleagues to do so as well.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Washington, Senator Stout.

Senator STOUT. Mr. President, it is my sad duty this afternoon to have to revisit this issue that we addressed several weeks before Christmas on the congressional redistricting plan. Those Pennsylvanians who are watching this afternoon's Session trying to learn about how democracy works are going to be shocked to see what happens here, because it is preordained what will happen here, because the Republican Party controls the Majority in the State House, in this Chamber, the Governor's Office, and the courts of this Commonwealth. But what is going to happen here on congressional redistricting will have an impact on all 12 million Pennsylvanians, because it will determine how the Federal government operates for the next 10 years, how Federal funds are distributed throughout the nation, how they are impacted here in the Commonwealth of Pennsylvania.

What I saw in 1971 when I first became a Member of the House and was involved in the redistricting plan was that at that time I got one sheet of paper, 8 1/2 x 11, signed by Dr. Thomas Morgan, a ranking Democrat from Pennsylvania, and Congressman Saylor. That was the redistricting plan for the Commonwealth. Today we have printouts and computers spitting out information and deviations and all types of statistics, but in that day it was done in a fair process between the Democratic Party and Republican Party to determine how the districts would be redesigned for Pennsylvania. And that has happened over the years. This year we are seeing a plan that is blatantly political and will divert the control of Congress in this Commonwealth from a fair and balanced plan to a plan that is predominantly Republican, and in the future will actually disenfranchise many Pennsylvanians, particularly those who happen to be registered Democrats, because they are going to be watered down.

What we are seeing is that the previous speakers this afternoon have focused on southeastern Pennsylvania. I wanted to focus on southwestern Pennsylvania, because one of the things that the courts have looked at is communities of interest over the years, and communities of interest in the counties of Washington, Greene, and Fayette have been of common interests, the same type of people, demographics, the same type of economic interests, and so forth, and for nearly a hundred years have been part of a congressional district. The plan that is before us this afternoon meanders through southwestern Pennsylvania, from Cambria County through nine different counties, through the extreme southwestern Greene County, and will split that up and that continuity will not be there as it has been over the years to represent the people of southwestern Pennsylvania, and they will be ill-served.

What we see here is that communities of interest over the years have built up projects such as the Mon-Fayette Expressway, which unites Fayette County, Washington County, portions of Westmoreland County, Allegheny County, and Greene County to become the economic lifeline for southwestern Pennsylvania have moved forward because of communities of interest. Now we are going to be split into different congressional districts. What happened about 3 weeks ago? We all know what happened. At that time, the plan in the so-called 12th District, starting up in Cambria County and coming down through nine different counties, would have pitted incumbent Congressman Jack Murtha against incumbent Congressman Frank Mascara from Washington County. What they did, because there was an outcry, Congressman Murtha may decide to retire and not seek reelection, there was an outcry to separate him from Congressman Mascara, and they did that. It was a very clever thing. Maybe the conference committee had a microsurgeon, because what they did was split the borough of Charleroi, where Congressman Mascara resides. Where he puts his head down at night, he is in the new 18th District, and when he goes out to get in his car in the morning parked across the street, he would be in

the 12th District, which would be represented by Congressman Murtha, and that is really splitting the area.

What they have done is created so-called census blocs. When they do the census every 10 years, it is a grid system that breaks up municipalities. In Washington County there are nine communities that are now in the census bloc and have been split up. What that does is creates mass confusion on election day–

The PRESIDENT. The Senate will come to order.

Senator STOUT. Thank you, Mr. President.

On election day there will be mass confusion in the polling places with people coming in from some municipalities where a guy may live in one congressional district and his neighbor across may be in another congressional district, and there will be mass confusion. We all complain about the people not participating in our election process and that it has been dropping over the years, and things like we are going to do today on this unfair redistricting plan will create further voter apathy and people will be turned off from voting because they will not know which precinct they are going to be in. It will create problems in the election bureaus in several counties, because they have difficulty getting people to serve on election boards now and there will be more confusion, people will get turned off, there will be additional costs to the taxpayers of the counties impacted by the splitting of municipalities in order to meet the so-called deviation requests, and I think it is grossly unfair to the people in southwestern Pennsylvania.

The year 2000 census figures showed that Allegheny County had a population of about 1.2 million people, and since it takes about 647,000 residents to become a congressional district, Allegheny County could support two full congressional seats within Allegheny County. What they want to do is get three seats, and what they are going to do is control the majority from Allegheny County and they are going to bleed off the other counties that are contiguous to Allegheny, such as Washington County and Westmoreland County and Beaver County, and pull those votes in so that Allegheny County could end up controlling three seats at the expense of these neighboring counties. And yet, we are always told of the so-called regional aspect of southwestern Pennsylvania, but it seems it always just goes one way, toward Allegheny County or the city of Pittsburgh, and shortchanges all the contiguous counties in southwestern Pennsylvania.

So, I think today the only responsible thing that we as Members of this Senate can do is to vote against this redistricting plan because it is grossly unfair, it will cause people to become disenfranchised, it will cause people to become disillusioned and not participate in our electoral process, and that is a thing we should encourage, not discourage by people not knowing which district they live in. There is going to be mass confusion. It is going to be extremely expensive for counties to administer these programs, and so forth. So, I urge that the responsible thing is to vote against this redistricting plan. I am sure we can come up with a better, more responsible plan.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Cambria, Senator Wozniak.

Senator WOZNIAK. Mr. President, I also rise to oppose this reapportionment plan. Even though the conference committee tweaked it a little bit, it still does not play any fairness, particularly to southwestern Pennsylvania. And although I know the people of Washington County, Greene County, Fayette County, they are all wonderful people because they are represented by Senator Barry Stout and Senator Rich Kasunic, that district is now over 160 miles long, and I will tell you what, it is going to be a very enthusiastic, energetic individual who is going to be representing that area. But it is not just the 12th Congressional District that has major changes in it. When I look at Congressman Shuster's, he is in two time zones, too. So I guess it has been fairly split among the Democrats and Republicans.

But what I would like to say is that this smacks completely of power politics. No matter which way you want to cut the pie to say you made some very strong Democratic congressional seats and that your Congressman is not completely opposed to this, when you look at the bigger picture, what the attempt has been is to make Pennsylvania one of the most Republican-controlled States in the Union, and I guess when you control the Pennsylvania House, you control the Pennsylvania Senate, and you have the Governor, you pretty much can do what you want to do. But there is one final group of individuals who have the final say, and in Pennsylvania, there are over 350,000 more Democrats in this State than Republicans, and I hope that next election they are awakened, they are enlightened, and they will see how crass and how obviously politically motivated it was to take this Commonwealth and make it potentially a State with 13 Republican Congressmen and 6 Democratic Congressmen. Exceedingly lopsided.

So he who laughs last laughs best. Perhaps this might be an opportunity to motivate our people to get to the polls and do exactly what America is supposed to do, go out and vote, vote their conscience, and vote the candidates of their choice.

Thank you, Mr. President, for the opportunity to rise today. I hope that we have a split decision here and not a party-line vote on saying that we should be able to go back and make a few more changes to this, but I have been around here a few more years than I would like to announce, and I know that this vote is going to be an up-and-down vote and this is what is going to go to the Governor's desk. What happens after that is any guess. I do not know if the congressional delegation will take it to court or not, but for my sake, my vote will be in the negative, and I also urge all my colleagues, both Democrats and Republicans alike, to do the same.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Stack.

Senator STACK. Mr. President, I must voice my unyielding opposition to Senate Bill No. 1200. In its present form, Senate Bill No. 1200 violates every basic tenet of representative government. This is legislation that seeks Draconian alterations of congressional districts for one reason and one reason only, to benefit elected Republicans. Never mind that most of Pennsylvania's registered voters are Democrats, never mind that the redrawn districts ignore traditional regional commonalities, never mind that many of the incumbents affected by this plan have served long, honorable terms in Congress, never mind that the citizens who voted these people into office will be robbed of their representation with absolutely no say in the matter. Never

mind any of that, Mr. President, because none of that matters to those who support this legislation. Senate Bill No. 1200 is a Republican version of a new Lottery game, a game that is rigged at every level to serve the few and disregard the many.

While this bill casts a bleak shadow over the entire State, I would like to draw my colleagues' attention to the situation in my district in northeast Philadelphia. Senate Bill No. 1200 proposes to merge the northeast district now held by Democratic Congressman Robert Borski with the Montgomery County district of Democratic Congressman Joe Hoeffel. The merged district helps neither the citizens of northeast Philadelphia nor of Montgomery County. I have no qualms with the work of Congressman Joe Hoeffel. I think he does a great job. But Congressman Borski is a ranking House member who has done much to help his district, its residents, its neighborhoods, its economy, and its businesses. He has spent 20 years gaining invaluable seniority in a body that values seniority above all else. Democrats and Republicans alike have benefitted from his consistently superior tenure and benefitted from millions of dollars that Congressman Borski has brought home to Pennsylvania and Philadelphia and to his district. In essence, the reapportionment plan approved in both State Chambers have compromised Congressman Borski's district and complicated his reelection chances. They have taken two strong Congressmen and placed them in a situation where one will lose his seat.

Both of these cynical reapportionment plans represent partisan politics at its absolute worst. In their quest for pure political gain, and nothing more, both Houses are aggressively gutting the basic precept of representative government. They are taking away the average citizen's right to vote for their own representative in Congress.

Montgomery County needs Joe Hoeffel, northeast Philadelphia needs Bob Borski. It appears that reapportionment will blithely ignore the needs of one of these constituencies, and probably both. Senate Bill No. 1200 may make perfect sense in another universe, but for those of us who do not have seats on the mothership, let me offer a dose of reality: I recommend that we revise Senate Bill No. 1200 to maintain Congressman Hoeffel's district as is and merge Congressman Borski's current 3rd Congressional District with a portion of neighboring lower Bucks County. This is a proposal that makes geographic and political sense. In fact, it is just plain common sense. I would further recommend that if the Republican Party wants to change the face of Congress, that they take a more traditional approach, and that approach is the ballot box.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Wagner.

Senator WAGNER. Mr. President, I rise in opposition to Senate Bill No. 1200 on the Supplemental Calendar, a bill that for the second time we are voting on in the last 30 days, and quite frankly, Mr. President, I have to say that Senate Bill No. 1200, as we see it today, is no better than Senate Bill No. 1200 that we saw in early December. I think anyone who was to honestly look at this plan would agree with me. Mr. President, we hear initials for everything and we hear different phrases for different items that we read about and see, but this, very frankly, is a PPP - a purely partisan plan - and there is no doubt about it. It is as partisan a plan as I have ever seen as an elected official.

As I indicated, Mr. President, the last time I was on the floor and we had a vote on this, I thought you only got one vote every 10 years. I guess you get two every 10 years, because we are voting on pretty much the same plan that we voted on 30 days ago. Mr. President, I started out then and I am going to start out also today by saying this vote is vitally important. We really only have redistricting every 10 years, and it is one of the most important votes we have as a Member of the General Assembly, that we have the right and we have the honor as elected officials in all States, the 50 States across America, to vote on congressional reapportionment. We as State legislators vote on that, and sometimes the public does not even know that, Mr. President, that we at the State level vote on Federal redistricting. We are doing that today. And this vote is an education in government and it is a vote that is an education on politics, but unfortunately, it is bad politics. It is a very important vote though because it impacts 12.2 million people in Pennsylvania.

As I said before, what is so important to me about this is it is how Pennsylvania stacks up against other States in this country with our congressional delegation. It is not really about who can run for what office or what party is in control, it is about how Pennsylvania stacks up against Alabama, Nevada, Louisiana, California, and every other State in America. And quite frankly, the way I read this plan, and I think the way everyone reads this plan, Pennsylvania does not stack up well, because we are throwing people out of Congress. That is what this plan is doing. We are throwing some very influential Pennsylvanians out of Congress, and we are diminishing the ability of certain people to stay in Congress, people who have fought every day for Pennsylvania, and if they had the ability would continue to fight. Unfortunately, this plan does not give them that ability.

The other unfortunate item as it relates to this plan, Mr. President, and as I have read in newspaper article after newspaper article, and I read about 50 newspaper articles in the last day, is that the Republican National Committee, or people outside of Pennsylvania, are influencing how this plan is drawn. In other words, not Pennsylvanians. Consequently, we have people from Illinois, Dennis Hastert, the Speaker of the House of Representatives; we have the Republican congressional chairman of the Republican Party, Tom Davis, who has influenced this plan. We have Karl Rove, I am not sure where he is from, but he is not from Pennsylvania, influencing this plan, and we even have the President, who is from Texas, influencing this plan. And I have to say for the record, none of them really care about Pennsylvania like anyone in this room should care about Pennsylvania, because this plan is about Pennsylvania and its ability to compete nationally. We should be doing what is best for Pennsylvania, and we are throwing certain people out of office, Mr. President, and in the process we are throwing the baby out with the bath water. That is what we are doing with this plan.

Mr. President, we presently have 21 congressional districts, 11 are Republican and 10 are Democratic, and we all know that a plan could have been drawn based on the new census information for Pennsylvania to have two less congressional

representatives, or to have 19, where the plan could have been 11 Republicans and 8 Democrats, and that plan could have been drawn very easily. Unfortunately, that was not acceptable to the other side of the aisle, or the Majority party in Pennsylvania. The plan we are voting on today has the objective of creating, quite frankly, 13 Republicans and 6 Democrats. That is okay when you are talking about numbers, it is not okay when you are talking about real people and whom they represent, especially when they represent Pennsylvanians, and what we are really talking about is hurting Pennsylvania because we are throwing the people out of office who have done a great job representing Pennsylvania, and we, in essence, are lessening our ability to bring home dollars in projects for Pennsylvania, and that is really the bottom-line issue.

It is not who serves in office, because the public, the 12 million people do not really care the majority of time who serves them in office. They do not care if it is Jack Wagner or Rich Kasunic or anyone else. They simply want good representation and they want someone in Washington who can get things done for their congressional district, get things done for Pennsylvania, and what we are doing with this plan is reducing our ability for that to happen in Washington. We are throwing people out of office who are very influential on certain committees, people who have had significant tenure, people who can compete with the Dennis Hasterts and the Tom Davises of the world. We are throwing them out of office, so we are giving the advantage to other States.

Mr. President, I read an article yesterday, a letter to the editor in the Pittsburgh Tribune Review, January 2, 2002, and I will just read two paragraphs very briefly. It is written by a Mr. George Huss, Jr., from New Florence, and he talks about redistricting. *(Reading:)*

"I would like to voice my opposition to the congressional redistricting plan that shows the congressional district currently represented by John Murtha stretching in a thin line from Cambria County to the West Virginia border. In my opinion, due to the area that must be covered, this new district will hurt the effectiveness of anyone," **—and I repeat, anyone—** "who may wind up representing the district, including Rep. Murtha.

"As a lifelong Republican, I feel the Pennsylvania Republican majority is doing a great disservice to folks like me by watering down our voice in Washington. I understand that there is a political game to be played, but I also believe that a more centralized district rather than the long, thin version in this plan would be more beneficial to the people of the district by allowing regionalized representation.

"Mr. George Huss, Jr., New Florence."

The way the people see this plan, Mr. President, and quite frankly, the way I see the plan, Congressman John Murtha, in his district, I guess he will survive in his district, but his new district is the worst, ugliest drawn district I have ever seen in looking at a congressional district. It is, as someone described, an upside down Chinese dragon, because it goes from one area of the northwest back to the east and back to the southwest. He is a Congressman with 27 years' experience in the United States Congress. It is my understanding he is 10th in seniority, he is a ranking member of the Defense Appropriations Committee, and he gets one of the worst drawn districts I have ever seen, and that is what the gentleman, Mr. Huss, just described in his letter, that not only will it be difficult for Congressman Murtha to represent this district appropriately, but it would be very difficult for anyone to represent this district appropriately. Why? Because people in different counties do not know who they are represented by in Congress. Congressman Murtha previously represented the majority of Indiana County, Somerset County, I believe all of Cambria County. Now, he is in Allegheny County, Westmoreland County, Greene County, Fayette County, Washington County, and maybe some other counties. And this was drawn purposely to create a Republican district and to put another Congressman, Congressman Frank Mascara, at a distinct disadvantage.

Mr. President, I said the last time I spoke on this floor, and I will say it again, basically what has happened here is we have reduced our effectiveness in the Congress of the United States with this map to favor the Republican Party to have more seats in Congress. That is the only reason why this plan is in front of us today. It is not for any practical reason to help Pennsylvania, and that is what is most offensive about it. This plan could have been drawn with 11 Republicans and 8 Democrats, and we could have retained every single congressional member in the Congress of the United States of America, but we have chosen not to do that, and in the process hurt Pennsylvania.

Mr. President, as it relates to western Pennsylvania, it is especially harmful, and I know my colleagues in southeastern Pennsylvania have some serious concerns, and rightfully so, and have voiced them and have put them on the record, in terms of the elimination of certain congressional people with significant influence, like Congressman Borski, for instance, who has 20 years on the Transportation Committee.

Well, Mr. President, there are a number of projects in southwestern Pennsylvania that are in serious jeopardy now as a result of this plan, and I would like to mention a few of them. Everyone in this Chamber has heard about the Pennsylvania high-speed magnetic levitation proposal. There were seven regions of the country competing for the most progressive, highly-advanced transportation system in the world, high-speed magnetic levitation, where electromagnets are utilized to propel a transportation system. It is in use today in a demonstration project in Germany, and there is one in Japan. There is none in the United States of America. The Congress of the United States has made that project a priority for this country, and out of the seven regions that were pursuing it, five were eliminated and two are left. The two that are left are western Pennsylvania and a project where a system would be built from Washington, D.C., to Baltimore, Maryland. The two are competing, and the final choice will be made in January 2003. So, the two are in the final stretch of determining which of the two proposals is better and which has more political influence in Washington.

Well, I have to tell you, based on the congressional plan put in front of us today, in terms of the political influence and which region will win, it will be Washington-Baltimore and not western Pennsylvania, because they are retaining their congressional people who are in influential positions, and Pennsylvania is losing theirs. And many of these projects, yes, do come down to influence in Washington. Unfortunately, when it comes to the western Pennsylvania plan, which would start, incidentally, in my district at Pittsburgh International Airport, would go to downtown Pittsburgh, to Monroeville, and end in Senator

Kukovich's district in Greensburg, a 45-mile system that will receive $950 million from the Federal government. The winner, one of those two regions next January is going to receive $950 million. Well, based on the Republican congressional plan put in front of us today, it is my prediction, Mr. President, that Pennsylvania, specifically western Pennsylvania, will lose, because we will not have the influence in Washington. We are going to eliminate Congressman Borski, 20 years on the Transportation Committee. We are going to eliminate Congressman Mascara, 8 years on the Transportation Committee. We lost Congressman Shuster, he retired, who was the chairman of the Transportation Committee. Who is going to be in Washington to fight for Pennsylvania? That is what I want to know. And quite frankly, based on this plan, there is not going to be anyone in Washington.

So, this plan in front of us is going to kill the high-speed magnetic levitation transportation system for western Pennsylvania. We are going to lose at least $950 million of Federal money. But, Mr. President, we are going to lose much more. There is another project, the Mon-Fayette Highway in western Pennsylvania, that desperately needs, and Senator Stout knows this very well because he has worked on it long and hard, Federal money for its completion. We take away these congressional leaders and that money will not flow to western Pennsylvania. We have another project at Pittsburgh International Airport, hopefully to save U.S. Airways, in terms of building a maintenance facility where we are going to be coming to the State for dollars to do that. Hopefully, the State money will be there from the Governor and the General Assembly, but it requires Federal money also. Again, we are losing our effectiveness by throwing people out of office who are the people fighting for these projects in Washington.

Mr. President, this plan is not in the best interest of Pennsylvania. As a matter of fact, if we vote to approve this plan today, who really wins are the other States in this country, because we have put them in a more competitive position in Washington than Pennsylvania, so that there can be a couple more Republican congressional members in the Congress of the United States, out of 435 members. That is really what we are talking about here today, what is in the best interest of Pennsylvania. And quite frankly, Mr. President, this plan is not in the best interest of 12,200,000 Pennsylvanians, and is the reason why we should vote "no."

Thank you.

The PRESIDENT. The Chair recognizes the gentleman from Fayette, Senator Kasunic.

Senator KASUNIC. Mr. President, today I stand in the Senate Chamber to speak against a plan that I feel is nothing more than a deliberate power grab by the Majority party of the State Senate and the House of Representatives. Of particular concern to me are the newly drawn 12th, 18th, and 9th Districts. The 12th District encompasses nine counties and yet does not contain one entire county as it snakes through western Pennsylvania. Looking at the map, it is truly a gerrymandered district. How anybody who sat down and helped devise this plan and put this map together and felt that this was going to be in the best interest of the people in those nine counties is beyond me. Without looking at the map, we all know why this is being done.

Mr. President, this plan goes even further. It splits precincts or voting districts within a congressional district. For example, a resident can have a different Congressman than their next door neighbor. This is simply unacceptable in this day and age when, and we all know this as elected officials, many of our constituents simply do not know who their elected officials are. Now we are going to make it even more difficult by splitting streets and alleys and neighborhoods. We are going to ask people on one side of a lot to vote for one Congressman and ask somebody on the next lot to vote for another Congressman. This is going to be confusing, it is going to be expensive, it is going to create havoc for counties and election bureaus, it just is not going to work out. We are simply going to disenfranchise more people, and more people are going to quit voting.

Within the 12th District, this plan divides voting districts in Brackenridge in Allegheny County, ward 1. In Fayette County, Connellsville City, wards 1, 2, and 3 are divided. In Washington County, ward 5 in North Strabane is going to be split. Split voting precincts do not do us any bit of good, it only further dilutes the representation of our citizens. Likewise, Mr. President, the 18th District also splits ward 5 in North Strabane Township, Washington County. The intertwining of the 12th District through the 18th District indicates the Majority's will of picking up a few voters here, a few voters there, sacrificing, yes, sacrificing the representation of those constituents, all for the political gain of one Member sitting across the aisle. This action, Mr. President, is despicable.

I question what similarities communities in Greene County and Fayette County will have with those in Armstrong County and Cambria County, or what those citizens in Fayette County will have in common with Bedford County constituents or Altoona area people. How often will the citizens of Fayette County get the chance to see Congressman Shuster in Dunbar Township or North Union Township or Spring Hill Township? Do you think he will really get there very often to visit?

Mr. President, these new districts are not communities of interest. They were carved out to give Republicans a leg up and to challenge the viability of Democrats in the future. Congressman Murtha is the senior member of the Pennsylvania delegation. He sits on the powerful Appropriations Committee and is the ranking member of the Defense Appropriations Subcommittee, in addition to being one of the most senior members in Congress today. Congressman Mascara, as has already been mentioned, has served 8 years on the very powerful and influential Transportation Committee. I believe next year we are going to be formulating a plan on how to spend the Federal highway moneys. Do you think by eliminating Congressman Mascara we will have a seat at that table? Do you think we will really have a voice? Do you think Pennsylvania will really get its fair share of an appropriation to help us with our much-needed projects in our highways? These men wield tremendous influence in Washington for the people they represent. Causing damage to these districts is nothing more than a slap in the face to the people they represent.

Unfortunately, this bill is going to be voted on today, and it will probably pass, but those who vote for this will simply be diluting the effectiveness of Pennsylvania's representation in Washington, especially in western Pennsylvania where two

proven leaders, Congressman Murtha and Congressman Mascara, alive.

Mr. President, we cannot forget the most important issue in all of this and why they are facing elimination under this plan: They are Democrats. That is right, they are Democrats, and that is why they are paying the price. The representation of Pennsylvania is being compromised by the political ambitions of this body. Again, Mr. President, the formulation of this plan and the affirmative votes of my colleagues across the aisle are disheartening, at best. It should not be about politics. It should not be about political opportunities, Mr. President. It should be about doing what is right for the people of Pennsylvania. So, for the next 10 years, for the next 10 years, anyone in this General Assembly who votes for this plan will be responsible for Pennsylvania losing clout in Washington, D.C. They will be responsible when Federal funding for much-needed projects dries up, and they will be responsible when the White House turns its back on the inexperienced new members of Congress.

So, as a last minute appeal, I ask my colleagues here in the Senate to please, please do the right thing and do what is best for the people of Pennsylvania. Join me and vote "no" for this plan that is before us today.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentlewoman from Philadelphia, Senator Kitchen.

Senator KITCHEN. Mr. President, I rise in total opposition to Senate Bill No. 1200, since it does something that I feel is wrong. This bill reduces the number of African-Americans in the 1st Congressional District from 52 percent to 47 percent. In essence, this is an insult to the countless number of dedicated persons who worked so hard to reach this number over the years. African-Americans will not take a step backwards. This bill is a largely partisan matter which negatively affects people of color, namely African-Americans. We cannot sit back and allow the largest number of minorities in Pennsylvania to be diluted. African-Americans comprise about 10 percent of the total population in Pennsylvania, and we will not allow ourselves to be ignored. Over the years the African-American community has grown in political power. This power has grown through hard work and struggle. For this reason, we will not allow ourselves to be disenfranchised for the sake of partisanship. Today, I feel as if I can speak for all African-Americans in the 1st Congressional District when I urge all Members in this Senate to reject Senate Bill No. 1200.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, it seems like just yesterday that I was standing at this microphone addressing the issue of congressional reapportionment, and I was happy the next day when the House of Representatives decided not to concur in the plan that was passed here in the Senate because I felt the same way then as I feel today, that that plan in the Senate was not in the best interests of the 12.2 million to 12.4 million people who live in Pennsylvania. Mr. President, today, on January 3, I feel the same as I did on that particular day, because somewhere, Mr. President, on Pennsylvania Avenue in Washington, D.C., a Republican operative is laughing, and that person is laughing because a plan to assassinate the Democratic congressional districts was carried out to a T, like fine work being done by an executioner. And while, Mr. President, I do not subscribe easily to the conspiracy theories that drip with evil and opportunistic intent, I am dangerously close to doing so today because of what we are considering, for not only did Republicans pull off what I consider to be one of the most shameless political power grabs in the history of Pennsylvania, but some of them actually are walking around acting like they did us a favor in bringing about this power grab.

The first plan, Mr. President, which I talked about, which the Capitol Hill newspaper Roll Call reported was laden with junior United States Senator Rick Santorum's fingerprints, was concocted in a Republican fantasyland where only the most reactionary individuals are allowed admission. Not even the finest fiction writers in America could have scripted such a debacle which would have left Pennsylvania with 13 Republican members in Congress and 6 Democratic members in Congress. Mr. President, that is shamelessness.

Then there is a level above which I believe baffles the mind and cannot even be comprehended. It defies logic and reason, and it insults everyone's intelligence in the process. This is what Members of the Republican Caucus not only here in the Senate but also in the House of Representatives are doing to the people of Pennsylvania today. Never, Mr. President, in my wildest imagination, never in the four times since I have gone through congressional reapportionment since I have been a Member of this august body, could we have foreseen the splitting of 60 municipalities in Pennsylvania solely for the purpose of trying to bring about a Republican plan that would guarantee 13 members of the Republican Party who would be elected to the Congress of the United States. Mr. President, the splitting of 60 municipalities in Pennsylvania was done for partisan political gain to further feather the nest of an already bloated Republican General Assembly that consistently places their appetite for power above the interests and the common good of the people of Pennsylvania.

Mr. President, I am not going to talk over and over about the things that have been discussed, that have been talked about by Members of my Caucus, about the injustices that have been done to many areas of the Commonwealth of Pennsylvania, from the southeast to the southwest, to the area that represents the northeastern part of this great Commonwealth of ours, to the areas that go from the line of West Virginia, the State line of West Virginia, up to and including the Susquehanna River. But the area that bothers me in the district that I represent, Mr. President, the same way it bothers every Member on this side of the aisle, is what has taken place in the 10th Congressional District and the 11th Congressional District that represent northeastern Pennsylvania, because history will show that the counties of Lackawanna and Luzerne heretofore have never been split in their congressional representation. Lackawanna County was always represented by one member of Congress, and the 11th Congressional District, or Luzerne County, was always represented by one member of Congress. Now, Mr. President, I would have no problem whatsoever if that member of Congress representing either one of those districts would represent both

counties, but to split and divide those two counties in the great northeastern part of the Commonwealth is an absolute shame.

Mr. President, let me give you a point in fact. Two of the communities that will be impacted on significantly in Lackawanna County are two communities of populations of less than 8,000 people. The community of the borough of Jessup, which has a population of less than 5,000 people, in their 3rd ward in the municipality of Jessup, based on the amendment that was given to us in the congressional redistricting and the identification of the districts, there will be two members of Congress representing the 3rd ward of Jessup. So depending on what side of the street you live on, in that same ward, you will either be represented by the Congressman representing the 10th Congressional District or the 11th Congressional District.

In the 1st ward of the municipality of Dickson City, the representation will be the same. With the 1st ward in Dickson City, depending on where you live in that ward, you will either be represented by a Democratic member of Congress or a Republican member of Congress in a different district. It is highly unfortunate, Mr. President, that we in the northeastern part of the State, purely and simply for political gain and satisfaction, have been divided so badly.

Mr. President, there appeared today in the Scranton newspaper a great editorial, and the headline of the editorial says, "Area's Future on Line in Harrisburg Today," and I am going to read one paragraph from that editorial. The paragraph says: *(Reading)*

"Even though GOP leaders in the State House have revised their original political evisceration of northeastern Pennsylvania, they continue to embrace a gerrymandered map that would divide Lackawanna County and Scranton into two separate districts, all for the sake of ensuring Republican control of the 10th District. Rep. Don Sherwood of Tunkhannock, the Republican who would benefit from the contrived redistricting, has yet to forcefully condemn it, even though former Rep. Joseph McDade, a Republican and Mr. Sherwood's predecessor, has condemned it in the strongest possible terms."

It does not represent the best interests of the people of northeastern Pennsylvania. It is unfortunate that some of the architects of this plan reside in northeastern Pennsylvania, they reside in the county of Luzerne, and they had the opportunity to bring about and do right and to change something that was wrong and make it right, but for some reason, they chose not to do it.

Mr. President, it is very unfortunate because at worst, the absolute worst that we could imagine, noses were thumbed at the people of Pennsylvania when it came to establishing what was right to represent for the next 10 years the basic needs of our people. Mr. President, if you look at what this plan will steal from Pennsylvania with regard to seniority on very important committees, all I have heard over and over from the Department of Transportation here in Harrisburg is that we are running out of money and that we cannot do the proper projects in Pennsylvania that must be done, and that the bridges in Pennsylvania are in terrible condition and are in dire need of repair. Yet three Democratic members of Congress serve on the most important committee with regard to repair of highways, the Transportation Committee - Congressman Mascara, Congressman Borski, and Congressman Holden - and all three, based on the plan submitted by the Republican Party here in Harrisburg, are being jeopardized, and it is extremely possible that we can go from having three senior members on the Transportation Committee that when the new Congress convenes in the year 2003, it is very possible that we will not have one member on the very important Transportation Committee.

Mr. President, the number one industry in Pennsylvania is agriculture. We have an individual who serves on the Agriculture Committee from Pennsylvania, and he is a person right now with rather significant seniority. In the plan that has been presented to the body for a vote on this conference committee report, that individual, Congressman Holden, is being put in a seat in the new 17th Congressional District that includes Congressman Gekas, in a seat that would be virtually impossible for Congressman Holden to win, and therefore what it would mean is that the number one industry in Pennsylvania, agriculture, which has Pennsylvania representation on the Agriculture Committee in the House of Representatives, when that new Congress convenes in 2003, based on the plan that you have submitted and you are going to vote for, we will have no representation on the Agriculture Committee in the Congress of the United States.

Finally, and I guess maybe the part that might cut and hurt just as much as any of them, is what is taking place in Montgomery County. In the Pennsylvania Senate as we talk here today, prior to our own redistricting, we have Senator Gerlach, Senator Greenleaf, Senator Holl, Senator Schwartz, Senator Constance Williams, and Senator Mike Stack who represent parts of Montgomery County. In this plan that is being advocated today, again, purely and simply for political reasons, there will be six members of Congress representing a county that has over 750,000 people living in that county. You would think, Mr. President, that the individuals who represent Montgomery County in this body would have the best interests, not the political interests of those people in Washington, D.C., but the political interests of the people who have elected them to serve here in Harrisburg. You would think that all six individuals - Gerlach, Greenleaf, Holl, Schwartz, Connie Williams, and Stack - would be on the same page with regard to representing Montgomery County. But, Mr. President, it appears that the three Democrats who represent Montgomery County will vote for the people of Montgomery County so that they could have one member of Congress representing the major part of Montgomery County, or 647,000 people, and the other 100,000-some-odd people from Montgomery County would go into another congressional district, Mr. President.

It appears that we will have a split vote today, that the Democrats on this side of the aisle will support the residents and their constituents in Montgomery County and vote against the plan that will put six members of Congress representing Montgomery County, and the Republican Party, who have authored this plan under the direction, based on the Capitol Hill newspaper report in Roll Call, based on the fact that the architect was the junior Senator from this great State of Pennsylvania, the Republicans in this body will vote against the people in Montgomery County who have elected them to represent their best interests right here in Harrisburg. When those things happen, there is something wrong with the system, when we are so interested in putting our political ambitions and the interest of some congressional wannabees here in this body ahead of the

best interests of the people of Pennsylvania, then something is wrong because the system has fallen apart. We should reject this plan, we should send it back to the conferees, we should instruct them as to exactly what should be done in Montgomery County, what should be done in the southwestern part of the State, and how we should correct the wrong that has taken place in northeastern Pennsylvania for the benefit of the 12-plus million people who live in the Commonwealth for the next 10 years.

Mr. President, I ask for a negative vote on this conference report for the people of Pennsylvania.

And the question recurring,
Will the Senate agree to the motion?
(The Clerk proceeded to call the roll.)

Senator BRIGHTBILL. Mr. President, could we be at ease?

The PRESIDENT. The Senate will be at ease.

(The Senate was at ease.)

Senator BRIGHTBILL. Mr. President, I have just two short points to make, and even I believe we will be ready for a roll call.

Senator MELLOW. Mr. President, the roll call was started and cannot be interrupted.

The PRESIDENT. You are correct, except the first name that was called did not answer. He was not on the floor.

Senator MELLOW. Well, maybe we should call his name again, Mr. President. The roll call was started and cannot be interrupted.

The PRESIDENT. I asked the Parliamentarian whether we were in the roll call, and he said as long as he did not answer the roll call, I could do that. Perhaps by agreement we can keep this brief and roll it on.

Senator BRIGHTBILL. Mr. President, I will accede to Senator Mellow.

And the question recurring,
Will the Senate agree to the motion?

The yeas and nays were required by Senator BRIGHTBILL and were as follows, viz:

YEA-28

Armstrong	Gerlach	Mowery	Scarnati
Bell	Greenleaf	Murphy	Thompson
Brightbill	Helfrick	Orie	Tomlinson
Conti	Holl	Piccola	Waugh
Dent	Jubelirer	Punt	Wenger
Earll	Lemmond	Rhoades	White, Donald
Erickson	Madigan	Robbins	White, Mary Jo

NAY-22

Bodack	Kasunic	Musto	Wagner
Boscola	Kitchen	O'Pake	Williams, Anthony H.
Corman	Kukovich	Schwartz	Williams, Constance
Costa	LaValle	Stack	Wozniak
Fumo	Logan	Stout	
Hughes	Mellow	Tartaglione	

A majority of the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

COMMUNICATIONS FROM THE GOVERNOR TAKEN FROM THE TABLE

Senator ROBBINS, by unanimous consent, called from the table communications from His Excellency, the Governor of the Commonwealth, recalling the following nominations, which were read by the Clerk as follows:

MEMBER OF THE COUNCIL OF TRUSTEES OF CALIFORNIA UNIVERSITY OF PENNSYLVANIA OF THE STATE SYSTEM OF HIGHER EDUCATION

December 17, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated September 28, 2001 for the appointment of Barbara Kauffman, 3182 Cornerstone Drive, Lancaster 17603, Lancaster County, Thirteenth Senatorial District, as a member of the Council of Trustees of California University of Pennsylvania of the State System of Higher Education, to serve until the third Tuesday of January 2003, and until her successor is appointed and qualified, vice Steven P. Stout, Washington, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE PENNSYLVANIA CANCER CONTROL, PREVENTION AND RESEARCH ADVISORY BOARD

January 2, 2002

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated July 19, 2001 for the appointment of Joel S. Noumoff, M.D., 238 Lloyd Lane, Wynnewood 19096, Montgomery County, Seventeenth Senatorial District, as a member of the Pennsylvania Cancer Control, Prevention and Research Advisory Board, to serve for a term of four years and until his successor is appointed and qualified, vice Christine E. Szarka, M.D., Pennlyn, whose term expired.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

CONTROLLER, MONROE COUNTY

January 2, 2002

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 31, 2001 for the appointment of Marlo A. Merhige, R.R. 1, Box 333, Tannersville 18372, Monroe County, Twenty-ninth Senatorial District, as Controller, in and for the County of Monroe, to serve until the first Monday of January 2002, vice The Honorable Kelly Lewis, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

CORONER, BUTLER COUNTY

January 2, 2002

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 31, 2001 for the appointment of William F. Young, III, Box 223 863 Halston Road, West Sunbury 16001, Butler County, Twenty-first Senatorial District, as Coroner, in and for the County of Butler, to serve until the first Monday of January 2002, vice William F. Young, Jr., resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

MEMBER OF THE DELAWARE VALLEY REGIONAL PLANNING COMMISSION

December 17, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated September 28, 2001 for the appointment of Stephanie Moore, 40 Red Barberry Drive, Etters 17319, York County, Thirty-first Senatorial District, as a member of the Delaware Valley Regional Planning Commission, to serve until terminated, vice Timothy J. Carson, Rosemont, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

JUDGE, COURT OF COMMON PLEAS, PHILADELPHIA COUNTY

December 17, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated September 26, 2001 for the appointment of Doris M. Leisch, Esquire, 3437 West Penn Street, Philadelphia 19129, Philadelphia County, Seventh Senatorial District, as Judge of the Court of Common Pleas of Philadelphia County, to serve until the first Monday of January 2002, vice The Honorable Bernard J. Goodheart, mandatory retirement.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

JUDGE, COMMONWEALTH COURT OF PENNSYLVANIA

December 17, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated September 26, 2001 for the appointment of Gregory E. Dunlap, Esquire, 613 Sweetbriar Drive, Harrisburg 17111, Dauphin County, Fifteenth Senatorial District, as Judge of the Commonwealth Court of Pennsylvania, to serve until the first Monday of January 2002, vice The Honorable James J. Flaherty, mandatory retirement.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

JUDGE, COURT OF COMMON PLEAS, NORTHAMPTON COUNTY

January 2, 2002

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated June 21, 2001 for the appointment of Edward G. Smith, Esquire, 5522 Kesslersville Road, Easton 18040, Northampton County, Eighteenth Senatorial District, as Judge of the Court of Common Pleas of Northampton County, to serve until the first Monday of January 2002, vice The Honorable James C. Hogan, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

JUDGE, SUPERIOR COURT OF PENNSYLVANIA

December 17, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated September 26, 2001 for the appointment of Gregory E. Dunlap, Esquire, 613 Sweetbriar Drive, Harrisburg 17111, Dauphin County, Fifteenth Senatorial District, as Judge of the Superior Court, to serve until the first Monday of January 2002, vice The Honorable John T.J. Kelly, Jr., mandatory retirement.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

RECORDER OF DEEDS,
ALLEGHENY COUNTY

December 17, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated September 27, 2001 for the appointment of Elizabeth Schehr, 65 Suffolk Road, Harrisburg 17112, Dauphin County, Fifteenth Senatorial District, as Recorder of Deeds, in and for the County of Allegheny, to serve until the first Monday of January 2002, vice The Honorable Michael A. Della Vecchia, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

SHERIFF, POTTER COUNTY

January 2, 2002

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 30, 2001 for the appointment of Kenneth G. Sauley, 215 Earl Road, Sabinsville 16943, Potter County, Twenty-fifth Senatorial District, as Sheriff, in and for the County of Potter, to serve until the first Monday of January 2004, vice Dale I. Cogley, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

SHERIFF, TIOGA COUNTY

January 2, 2002

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 29, 2001 for the appointment of John L. Perry, 25 Dantz Run Road, Wellsboro 16901, Tioga County, Twenty-third Senatorial District, as Sheriff, in and for the County of Tioga, to serve until the first Monday of January 2002, vice Lamar G. Green, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

TREASURER, BRADFORD COUNTY

January 3, 2002

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 31, 2001 for the appointment of Rebecca A. Clark, RR 1, Box 165, Towanda 18848, Bradford County, Twenty-third Senatorial District, as Treasurer, in and for the County of Bradford, to serve until the first Monday of January 2002, vice Nancy Schrader, resigned.

I respectfully request the return to me of the official message of nomination on the premises.

Mark S. Schweiker
Governor

NOMINATIONS RETURNED TO THE GOVERNOR

Senator ROBBINS. Mr. President, I move that the nominations just read by the Clerk be returned to His Excellency, the Governor.

A voice vote having been taken, the question was determined in the affirmative.

The PRESIDENT. The nominations will be returned to the Governor.

EXECUTIVE NOMINATIONS

EXECUTIVE SESSION

Motion was made by Senator ROBBINS,

That the Senate do now resolve itself into Executive Session for the purpose of considering a certain nomination made by the Governor.

Which was agreed to by voice vote.

NOMINATION TAKEN FROM THE TABLE

Senator ROBBINS. Mr. President, I call from the table a certain nomination and ask for its consideration.

The Clerk read the nomination as follows:

SECRETARY OF GENERAL SERVICES

August 7, 2001

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Kelly Powell Logan, 700 Moores Mountain Road, Mechanicsburg 17055, York County, Thirty-First Senatorial District, for appointment as Secretary of General Services, to serve until the third Tuesday of January 2003 and until her successor is appointed and qualified, vice The Honorable Gary E. Crowell, Camp Hill, resigned.

THOMAS J. RIDGE
Governor

On the question,
Will the Senate advise and consent to the nomination?

The yeas and nays were required by Senator ROBBINS and were as follows, viz:

YEA-50

Armstrong	Greenleaf	Mowery	Tartaglione
Bell	Helfrick	Murphy	Thompson
Bodack	Holl	Musto	Tomlinson
Boscola	Hughes	O'Pake	Wagner
Brightbill	Jubelirer	Orie	Waugh
Conti	Kasunic	Piccola	Wenger
Corman	Kitchen	Punt	White, Donald
Costa	Kukovich	Rhoades	White, Mary Jo
Dent	LaValle	Robbins	Williams, Anthony H.
Earll	Lemmond	Scarnati	Williams, Constance
Erickson	Logan	Schwartz	Wozniak
Fumo	Madigan	Stack	
Gerlach	Mellow	Stout	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Governor be informed accordingly.

EXECUTIVE SESSION RISES

Senator ROBBINS. Mr. President, I move that the Executive Session do now rise.

The motion was agreed to by voice vote.

SENATE RESOLUTION ADOPTED

Senators HUGHES, SCHWARTZ, BODACK, WAGNER, O'PAKE, MELLOW, COSTA, A. WILLIAMS, FUMO, BOSCOLA, KITCHEN KUKOVICH, WOZNIAK, TARTAGLIONE, LAVALLE, STACK, C. WILLIAMS, STOUT, KASUNIC, LOGAN, MUSTO and RHOADES, by unanimous consent, offered **Senate Resolution No. 148**, entitled:

A Resolution designating the week of January 13 through 19, 2002, as "Martin Luther King, Jr., Holiday Week."

On the question,
Will the Senate adopt the resolution?

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Hughes.

Senator HUGHES. Mr. President, I just wanted to make sure that all Members know, if it is appropriate with the Chair, that on the King resolution, we would like everyone to have an opportunity to cosponsor that.

The PRESIDENT. The resolution commemorating Martin Luther King, Jr., Week is on the desk. For any Member wishing to sign the resolution, it is here for such a purpose.

Senator HUGHES. Thank you, Mr. President.

And the question recurring,
Will the Senate adopt the resolution?

A voice vote having been taken, the question was determined in the affirmative.

SPECIAL ORDER OF BUSINESS
GUESTS OF SENATOR ALLYSON Y. SCHWARTZ PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentlewoman from Philadelphia, Senator Schwartz.

Senator SCHWARTZ. Mr. President, I would just like to briefly introduce an intern who has been working with me during her winter break. I do not know if she is still in the gallery, but she did come up with me to Harrisburg today. Her name is Amy Baumann, and she is from Cheltenham, Montgomery County, and she is a student at Brown University. She is doing a wonderful job in my district office, and I am glad that she had an opportunity to see us in Session.

The PRESIDENT. If the guest of Senator Schwartz is still in the gallery, would she please rise so that we may recognize you with a welcome to the Senate of Pennsylvania.

(Applause.)

INTERROGATION BY MINORITY LEADER

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, would Senator Brightbill permit himself to be briefly interrogated?

Senator BRIGHTBILL. Mr. President, I would love to be interrogated.

The PRESIDENT. Senator, Mellow, it sounds like he is very happy.

Senator MELLOW. Mr. President, it sounds like he is very optimistic.

Mr. President, with regard to the problem with medical malpractice, we on this side of the aisle were going to introduce a resolution today that would ask for a Special Session of the General Assembly on medical malpractice, but before I would even consider doing that, I would first like to ask the question, is there some ongoing discussion taking place, and can the gentleman share with us what is happening right now with regard to the medical malpractice problem in Pennsylvania?

Senator BRIGHTBILL. Mr. President, I would be pleased to do that, and I understand the desire to create a Special Session. I would note that I do not believe a Special Session is necessary or advisable, for the reason that once we get into Special Session, in order to move a bill it has to have three readings in the Senate, three readings in the House before it can be finally passed and sent to the Governor. I think at this point of our Session, we can actually move faster once we have a consensus using existing vehicles that are perhaps in one committee or another. I know there are some bills in my committee, the Committee on Rules and Executive Nominations, that we could use. So, I think once a consensus is developed, I believe we can actually move faster. So, I appreciate the gentleman's forbearance on that point.

Secondly, we had a long discussion in caucus before we adjourned back in December about this problem. I am sure you had -- I would guess that you had a similar discussion with your Caucus. There is a great concern. As a result of that caucus, Senator Jubelirer and I had some meetings with some of the interested parties. I have had some additional meetings with interested parties. We have developed a work group. The work group includes representatives of the House, the Governor's Office, and the Senate. And I know I had a private conversation with Senator Connie Williams, and she indicated her particular interest in the issue, and I expressed to her that we would do our best to keep her advised. My understanding is, through staff, we have been able to do that. I assume that is true. I would hope that it is. We would be very happy to have representatives from your Caucus participate in the work group, and frankly, I apologize for not extending the invitation before today. I think it was my

obligation to do that, and I expect that we will be working together to try to solve this problem.

Senator MELLOW. Thank you, Mr. President.

Mr. President, just one final point or question. I would like to be able to be in a position to meet with Senator Brightbill shortly after our conclusion here. We will not, obviously, introduce the resolution so we can work out mutual representation on our side of the aisle working with the group of individuals who are trying to draft a compromise so that hopefully when we come back later on this month we will be able to address the issue. But I feel it extremely important so that we can develop a consensus that we have the opportunity of having some input into that as it is being developed, and not necessarily to be informed and updated as to what is taking place, but to be part of the group that is developing the final legislative agenda.

Senator BRIGHTBILL. Mr. President, I would indicate that was my intent, and I have total confidence that Senator Mellow, or whoever he suggests to be their participants, will do a good job and be contributing Members, and I do not think we really need to confer. If he would just indicate to me whom he would like in those meetings, we will be happy to make sure that they are there. We have worked together before, and I think we will on this occasion, too. This is a very serious problem.

Senator MELLOW. Mr. President, I thank the gentleman.

PETITIONS AND REMONSTRANCES

The PRESIDENT. The Chair recognizes the gentlewoman from Northampton, Senator Boscola.

Senator BOSCOLA. On behalf of my colleagues, I want to wish everybody a happy, healthy, prosperous New Year. I think it is so fitting that our first day of Session in the Senate fell on the very first day of the new year. Traditionally, this is a time when we look back on the year that just passed and pause for a time of reflection. But for many families in Pennsylvania, it is hard today to look back before September 11 and picture how normal their lives used to be. For Bob Norder, the Fire Chief of Bethlehem Township Fire Company, every time he looks back he can still see the smoke and the rubble and the horror all around him as he and his men searched for victims at Ground Zero. And for one of my constituents, Laura Largo, when she looks back, she thinks about her two good neighbors, Paul and Charlie, who went to elementary school with her and were killed in the attack at the World Trade Center and whose bodies were never found in the rubble at Ground Zero.

Like so many Pennsylvanians who were personally touched in so many ways by these terrorist attacks, we all have a feeling of uncertainty as we look ahead to what this brand new calendar of days might bring us. But it is our job, Mr. President, it is our job as we begin this new year, to all work together to bring all of Pennsylvania's families together as proud Americans. And I know we cannot pass a bill to end the war in Afghanistan or guarantee that people all across Pennsylvania will be secure in their homes or safe from anthrax or future terroristic attacks, but we can do our part to help make Pennsylvania families more secure and not worry that they will lose their jobs or lose their homes or lose the opportunity to send their children to college. For those who lived through other wars, those who served to preserve our freedom, our greatest generation of older Pennsylvanians, we must work together so they do not lose their health because they cannot afford to buy their medicines, or lose their homes because they cannot afford to pay their property taxes.

As we begin this new year, Mr. President, I hope all of us remember that there is great power in gratefulness, and there is no power greater than hope for a better and brighter tomorrow. We can work together in the year ahead to make Pennsylvania a better and brighter place for families to call home. We can turn those challenges that are yet to come into great opportunities, and we can resolve from this day forward to look at every adversity and every obstacle and see that each one carries with it a seed of greater benefit.

In the year ahead in this Chamber, let us be grateful for the responsibility that so many people have entrusted in us and grateful for the challenges of tax reform, lowering the cost of prescription drugs, balancing the budget, and helping our local firefighters. Because all of these challenges, Mr. President, will test our resolve, stretch the limits of our abilities, and they will try to defy our will. But as one proud American and one very proud Pennsylvanian, I am confident that we will work together and we will succeed.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, I would just like to make two brief comments regarding redistricting. The plan that we just passed was prepared with very careful attention to the requirements of the Federal Voting Rights Act, and the 1st District and the 2nd District were drawn based upon recommendations from Congressman Fattah and Congressman Brady. Of the 19 districts, 10 have a Republican registration edge and 9 have a Democratic registration edge.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from York, Senator Waugh.

Senator WAUGH. Mr. President, every year around this time when the snow begins to fly and we think of ice on our roadways, there is another thing that comes to mind for those of us who have lived around Pennsylvania all of our lives, and that is the annual Pennsylvania State Farm Show. I have an opportunity this year as chairman of the Committee on Agriculture and as a member of the Farm Show Commission to take this time here at the end of our day today to remind all the Members of the Senate, all the staff members and other folks in the Capitol building who may be listening to this transmission, and certainly the folks in our audience at home who are watching over Pennsylvania Cable Network, that the Farm Show will begin on Saturday, January 5, with Governor's Day; Sunday is Family Day, a good day to attend the show; Monday is Agricultural Heritage Day; Tuesday is Dairy Day; Wednesday is Youth Day; and Thursday is the sale of all champion animals at the 2002 edition of the Pennsylvania State Farm Show.

This event, for those who may not know it, is a national spectacle, if you will. It is one of the most often cited national and certainly statewide events that showcases Pennsylvania's agricultural products. So take the time to come out, learn a little bit about our State's number one industry. Have a good time at

the Farm Show; it is really a nice place to spend a cold January day.

Thank you, Mr. President.

CONGRATULATORY RESOLUTIONS

The PRESIDENT laid before the Senate the following resolutions, which were read, considered, and adopted by voice vote:

Congratulations of the Senate were extended to Mr. and Mrs. Clifford Aukamp, Mr. and Mrs. Russell Garber, Mr. and Mrs. Robert L. Weiler, Mr. and Mrs. John Kruger, Mr. and Mrs. John Lefever, Mr. and Mrs. Paul Weaver, Mr. and Mrs. James Phipps, Mr. and Mrs. Robert Rebman, Andy Church, Andrew M. Gonner, Robert H. Thompson, Matthew B. Breiner, Christopher Breneman and to Derren Brunner by Senator Armstrong.

Congratulations of the Senate were extended to Joseph Thomas Krajewski and to St. Paul's Episcopal Church of Chester by Senator Bell.

Congratulations of the Senate were extended to Wagner Quality Shoes, Inc., of Pittsburgh by Senator Bodack.

Congratulations of the Senate were extended to Gregory Robert Kocher, Penn State Lehigh Valley, Pennsylvanians With Disabilities Day Committee of Macungie and to Northampton Borough Centennial, Inc., by Senator Boscola.

Congratulations of the Senate were extended to Michael F. Wahmann, Farmers Pride, Inc., of Fredericksburg and to Clover Hill Vineyards and Winery of Breinigsville by Senator Brightbill.

Congratulations of the Senate were extended to Ryan Callahan and to the Pennsylvania Association of Student Assistance Professionals (PASAP) by Senator Conti.

Congratulations of the Senate were extended to Mr. and Mrs. Don F. Warfel, Mr. and Mrs. Leon A. Rhodes, Mr. and Mrs. Ralph Kelley, Shane William Cohen, Christie Welsh, Aaron E. W. Cleaver and to Pennsylvania 4-H, Pennsylvania State University, of University Park, by Senator Corman.

Congratulations of the Senate were extended to Larry T. Welfer by Senators Corman and Helfrick.

Congratulations of the Senate were extended to Helen Formica by Senator Costa.

Congratulations of the Senate were extended to the Reverend Warren S. Harding, Mark Weidner, Aaron Nash, Anthony Joseph Boodhansingh, Andrew J. Wirth, Matthew James Weber and to Daniel Emery Taglioli by Senator Dent.

Congratulations of the Senate were extended to John A. Jordan, Jr., Robert M. Episcopo and to St. Luke Hospital-Allentown Campus by Senators Dent, Brightbill, Gerlach and Boscola.

Congratulations of the Senate were extended to David Richardson by Senator Earll.

Congratulations of the Senate were extended to Robert H. Craft, Andrew Wasuwongse and to Stephen G. Hoffner-McCall by Senator Erickson.

Congratulations of the Senate were extended to Daniel Hady, Brian Hady, Brock Smale and to the Downingtown High School Girls' Soccer Team by Senator Gerlach.

Congratulations of the Senate were extended to Mr. and Mrs. Raymond Knight, Sr., Jason William Merrill, Kyle Patrick McNealy, Mildred Brown and to Ellen B. Renish by Senator Greenleaf.

Congratulations of the Senate were extended to Mr. and Mrs. Delmar Shipe, Mr. and Mrs. John Yodock, Mr. and Mrs. Harry Edwin Boyer, Mr. and Mrs. Myles William Holdren, Mr. and Mrs. Fred L. Whitenight and to Dora Higgins by Senator Helfrick.

Congratulations of the Senate were extended to Mr. and Mrs. Victor Wisilosky, Corey Michael Barndt, Thomas Beggs and to the members of the Shanksville Volunteer Fire Company by Senator Kasunic.

Congratulations of the Senate were extended to the Reverend Dr. William B. Moore, Bishop Dr. Audrey F. Bronson and to Fannie Mae Belcher Jackson by Senator Kitchen.

Congratulations of the Senate were extended to Joshua McGeary, Leona Ellen Freda and to Steve Todoric by Senator Kukovich.

Congratulations of the Senate were extended to Mr. and Mrs. Adam Matalavy, Mr. and Mrs. William Thomas, Mr. and Mrs. Joseph Svecz, Mr. and Mrs. Charles Orner, Mr. and Mrs. Bill Moss, Brent T. Hoban, the Reverend Albert A. Chaffee, Ira Reynolds, Robert Luffe, Zachary F. Garm, Paul Meagher, Michael J. Hogan, Geraldine R. Hourigan and to the Wyoming Seminary Girls' Field Hockey Team by Senator Lemmond.

Congratulations of the Senate were extended to Kimberly Lang, Kathy Basel, The Honorable Ruth K. Fowler and to Mon-Yough Fire Defense Council, Inc., of McKeesport by Senator Logan.

Congratulations of the Senate were extended to Mr. and Mrs. William E. Nichols, Mr. and Mrs. Daniel Vogt, Mr. and Mrs. Joseph Badman, Mr. and Mrs. Donald Bennett, the Reverend and Mrs. Charles M. Heaps, Mr. and Mrs. Boyd Ferry, Mr. and Mrs. Charles Schucker, Mr. and Mrs. Donald Sebring, Mr. and Mrs. Leon Robinson, Mr. and Mrs. Ernest Young, Mr. and Mrs. Melvin Corson, Mr. and Mrs. Alvin Harvey, Mr. and Mrs. Harold Wakely, Mr. and Mrs. Henry D. Quigel, Sr., Matt Keller, Caleb Derr, Shay Boyles, Dan Weaver and to Wayne Lyon by Senator Madigan.

Congratulations of the Senate were extended to Ryan N. Worden by Senator Mowery.

Congratulations of the Senate were extended to Luke Edward Robinson, Rory P. Bigger, Brad Michael Schaming, South Fayette High School Varsity Cheerleading Squad of McDonald, Baldwin-Whitehall Hurricanes, South Fayette Sixth Grade Youth Football Team and to the West Allegheny High School Football Team of Imperial by Senator Murphy.

Congratulations of the Senate were extended to James Alansky, Paul Kemmerer, John E. Marut, Roman Markosky, Edward F. Konopka, Jack Griffiths, Joseph W. Gavlick, Stewart J. Emery, Frank Buzin, Edward Kobusky, Florian Suchar, Ruth E. Prutzman, Edward G. Leyshon, Cataldo Castellino, John J. Donnini, Eleanor R. Goch and to Mary K. Zambotti by Senator Musto.

Congratulations of the Senate were extended to George J Baxewanis, the Reverend J. Raymond Brubaker, Pennsylvania Association of School Nurses and Practitioners and Berks County School Health Association, Centre Park Historic District of Reading, Reading Facility of Rohm and Haas Company,

Morton Powder Coatings, and to the organizers of the 9th Annual Berks County Dr. Martin Luther King, Jr. Community Celebration by Senator O'Pake.

Congratulations of the Senate were extended to Mr. and Mrs. William Volk, Mr. and Mrs. Edward Perpich, Mr. and Mrs. Herman Willis, Mr. and Mrs. Charles Blosser, Mary Hritz, Loraine Day, Linda Kelly, Jean Weber, Michael W. Zeitler, Chris Panos, John K. Thornburgh, Gail Ghai, Casey Melvin, Bobby Hasenbein, James Beuth, Diane Holden, Dr. Richard A. Jennings, Deborah Josbeno, Muriel Petschke, John Fries, Erin Ebeck, the Honorable William J. Coyne, Joseph Javersack, Richard James Gable, Susan Kelly, Lillian Kelly, Elaine Shaffer, Nicola A. Hood, Scott Golmic, Michael Penn, Kelly Mistick, Jason Hawk, Mark Van Der Feyst, Steve Zorbas, Larry Clutter, Steve Dancisin, Richard L. Stover, the Reverend Robert Strobel, Megan McCormick, Betty Harris, Dave DiSanti, Mike Maffucio, Natalie Sarver, Fred Bartok, James L. Barto, Michael Ban, Tom Kritko, Jordan Ellis, Pat Van Eman, Dave Berneburg, seventh grade students of Hampton Middle School, Ingomar Middle School of Pittsburgh, North Allegheny Association for the Advancement of Sports and Education of Pittsburgh, Hilltop Hose Company No. 3 of Natrona Heights, and to the Ingomar United Methodist Church of Pittsburgh by Senator Orie.

Congratulations of the Senate were extended to the Honorable Peter W. Panza, John J. Mank, Denver Allen McDowell, Jr., Ilene Patricia Scoop, Eileen Holtzman and to the Free in the Herd Sanctuary of Harrisburg by Senator Piccola.

Congratulations of the Senate were extended to Faye Signor by Senator Punt.

Congratulations of the Senate were extended to Mr. and Mrs. Robert Hope, Thomas W. Ward, Jr., Michael J. Davis and to Brett Banditelli by Senator Rhoades.

Congratulations of the Senate were extended to Andrew J. Skladanek, MCAR, Inc., of Hermitage, and to the Farrell Area High School Girls' Volleyball Team by Senator Robbins.

Congratulations of the Senate were extended to Mike T. Bilder, Leonard Strom, Leon F. Robertson, Amelia Musantry and to David Brennen by Senator Scarnati.

Congratulations of the Senate were extended to the Slavery Museum by Senator Schwartz.

Congratulations of the Senate were extended to Matthew S. Naughton, Robert A. Hood III and to Bruce Horn by Senator Stack.

Congratulations of the Senate were extended to Mr. and Mrs. William L. Purdy by Senator Stout.

Congratulations of the Senate were extended to Matthew Marvin, Eddie Lee Mallard, Kevin L. Karabin, Gregory Lysko, William Burson Teodecki, James L. Head and to Brian G. Jefferes by Senator Thompson.

Congratulations of the Senate were extended to F. Nicholas Imperato by Senators Thompson and Gerlach.

Congratulations of the Senate were extended to Michael Pugh, Fred C. Colteryahn, James DeVita and to the Fairless Hills Volunteer Fire Company by Senator Tomlinson.

Congratulations of the Senate were extended to Timothy P. Logue and to Mazie Willetta Smith by Senator Wagner.

Congratulations of the Senate were extended to Franklin Ross Grove III, Darin Steven Sherfey, Garrett S. Jay, Stella M. Klinedinst, Dr. Kieren P. Knapp, Aaron Wells, Michael C. McCullough and to the York Conference Tutoring Program by Senator Waugh.

Congratulations of the Senate were extended to Peter Stephen Daniels, Nathan M. Kapp, Shawn M. Miller, Ryan Miles Porter and to Ray William Yohe by Senator Wenger.

Congratulations of the Senate were extended to Mr. and Mrs. John Bukosky, Mr. and Mrs. James Bernard, Mr. and Mrs. LeJuene Pyer, Mr. and Mrs. Walter Hooks, Robert P. Polenik and to Joseph Riddle by Senator D. White.

Congratulations of the Senate were extended to Mr. and Mrs. Wayne Gruber, Alan Cacciamani, Pete Hufnagel, James J. Strange and to Piney Creek Limited Partnership by Senator M. J. White.

Congratulations of the Senate were extended to Michael McNair by Senator A. H. Williams.

Congratulations of the Senate were extended to Mr. and Mrs. Hal Cooley, Mr. and Mrs. Jay Clark, Mr. and Mrs. John Yanko, Mr. and Mrs. Joseph J. Slavick, Mr. and Mrs. George Ripple, Mr. and Mrs. William L. Tittle, Mr. and Mrs. Frank Smiach, Mr. and Mrs. William L. Schellhammer, Sr., Mr. and Mrs. Carl Massimo, Mr. and Mrs. Benjamin L. Baltzer, Mr. and Mrs. Hal Cooley, Mr. and Mrs. Louis Vigna, Mr. and Mrs. John Haluska, Mr. and Mrs. Ted Scislowicz, Mr. and Mrs. Robert Nemeth, Jr., and to Mr. and Mrs. Louis Fabina by Senator Wozniak.

CONDOLENCE RESOLUTIONS

The PRESIDENT laid before the Senate the following resolutions, which were read, considered, and adopted by voice vote:

Condolences of the Senate were extended to the family of the late Honorable Warner M. Depuy by Senator Lemmond.

Condolences of the Senate were extended to the family of the late Anthony Martrano, Jr., to the family of the late Mary Lynn Cervone, to the family of the late Pearl Watts, to the family of the late Margaret Hollo, to the family of the late James W. Knox and to the family of the late Albert A. Franceschina, Jr., by Senator Orie.

Condolences of the Senate were extended to the family of the late Joseph Bosnic by Senator D. White.

POSTHUMOUS CITATION

The PRESIDENT laid before the Senate the following citation, which was read, considered, and adopted by voice vote:

A posthumous citation honoring the late Joseph Saporito was extended to the family by Senator Musto.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, I move for a recess of the Senate to the call of the Chair.

The motion was agreed to by voice vote.

The PRESIDENT. Without objection, the Senate will stand in recess to the call of the Chair.

AFTER RECESS

The PRESIDENT. The time of recess having expired, the Senate will come to order.

HOUSE MESSAGE

HOUSE ADOPTS REPORT OF COMMITTEE OF CONFERENCE

The Clerk of the House of Representatives informed the Senate that the House has adopted the Report of Committee of Conference on **SB 1200**.

BILL SIGNED

The PRESIDENT (Lieutenant Governor Robert C. Jubelirer) in the presence of the Senate signed the following bill:

SB 1200.

ADJOURNMENT

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, I move that the Senate do now adjourn until Tuesday, January 22, 2002, at 1 p.m., Eastern Standard Time.

The motion was agreed to by voice vote.

The Senate adjourned at 5:25 p.m., Eastern Standard Time.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

No. 2002-13b

OFFICE OF THE SECRETARY OF THE COMMONWEALTH

Harrisburg, **February 14, 2002**

PENNSYLVANIA, SS:

I, C. Michael Weaver, Acting Secretary of the Commonwealth of Pennsylvania, DO HEREBY CERTIFY, That the attached are true and correct copies of the Official Election Results for the year 2000 for the offices of President, United States Senator, Attorney General, Auditor General, State Treasurer, and United States Congress, as the same appears of record and remains on file in the Bureau of Commissions, Elections and Legislation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of my Office to be affixed, the day and year above written.

C. Michael Weaver
Acting Secretary of the Commonwealth

DEFENDANT'S EXHIBIT 60

BEST AVAILABLE COPY

COUNTY	BUSH GEORGE W. REPUBLICAN	GORE AL DEMOCRATIC	PHILLIPS HOWARD CONSTITUTION	BROWNE HARRY LIBERTARIAN	NADER RALPH GREEN	BUCHANAN PATRICK J. REFORM
ADAMS	20,848	11,682	27	72	696	108
ALLEGHENY	235,361	329,963	3,522	945	10,575	2,112
ARMSTRONG	15,508	11,127	31	30	485	242
BEAVER	32,491	38,925	104	153	1,450	470
BEDFORD	13,598	5,474	8	19	265	71
BERKS	71,273	59,150	125	682	3,494	439
BLAIR	28,376	15,774	76	74	693	147
BRADFORD	14,660	7,911	22	48	600	89
BUCKS	121,927	132,914	669	1,017	6,294	601
BUTLER	44,009	25,037	50	125	1,287	316
CAMBRIA	28,001	30,308	170	88	1,369	350
CAMERON	1,383	779	5	3	50	26
CARBON	9,717	10,668	187	41	574	90
CENTRE	26,172	21,409	39	148	1,623	147
CHESTER	100,080	82,047	103	716	4,302	314
CLARION	9,796	5,605	16	31	293	102
CLEARFIELD	18,019	11,718	26	43	570	233
CLINTON	6,064	5,521	46	13	307	43
COLUMBIA	12,095	8,975	21	49	663	91
CRAWFORD	18,858	13,250	155	74	854	130
CUMBERLAND	54,802	31,053	47	222	1,749	189
DAUPHIN	53,631	44,390	102	221	2,059	255
DELAWARE	105,836	134,861	702	743	5,348	587
ELK	7,347	5,754	18	17	352	90
ERIE	49,027	59,399	449	242	2,980	238
FAYETTE	20,013	28,152	225	58	798	286
FOREST	1,371	843	1	2	57	9
FRANKLIN	33,042	14,922	43	69	761	132
FULTON	3,753	1,425	1	9	77	20
GREENE	5,890	7,230	18	39	337	120
HUNTINGDON	10,408	5,073	12	21	340	103
INDIANA	16,799	13,667	17	46	711	161
JEFFERSON	11,473	5,566	29	47	339	120
JUNIATA	5,795	2,656	9	21	158	28
LACKAWANNA	35,096	57,471	1,341	75	2,134	264
LANCASTER	115,900	54,968	378	340	3,341	389
LAWRENCE	18,060	20,593	27	50	653	257
LEBANON	28,534	16,093	143	102	873	135
LEHIGH	55,492	56,667	214	322	3,278	307
LUZERNE	52,328	62,199	981	148	3,456	474
LYCOMING	27,137	14,663	217	62	965	139
MCKEAN	9,661	5,510	129	37	403	64
MERCER	23,132	23,817	348	70	1,073	285
MIFFLIN	9,400	4,835	49	25	264	41
MONROE	23,265	21,939	116	116	1,319	123
MONTGOMERY	145,623	177,990	200	1,231	6,816	562
MONTOUR	3,960	2,356	8	10	132	26
NORTHAMPTON	47,396	53,097	592	269	3,012	324
NORTHUMBERLAND	18,142	13,670	109	45	956	329
PERRY	11,184	4,459	15	39	309	65
PHILADELPHIA	100,959	449,182	1,032	979	8,206	822
PIKE	9,339	7,330	99	41	498	57
POTTER	4,858	2,037	7	18	146	24
SCHUYLKILL	29,841	26,215	40	82	1,713	399
SNYDER	8,963	3,536	10	15	271	46
SOMERSET	20,218	12,028	24	47	487	181
SULLIVAN	1,928	1,066	4	6	91	10
SUSQUEHANNA	10,226	6,481	12	32	459	61
TIOGA	9,635	4,617	24	40	404	52
UNION	8,523	4,209	17	20	373	33
VENANGO	11,642	8,196	55	42	467	121
WARREN	9,290	7,537	129	32	466	87
WASHINGTON	37,339	44,961	60	111	1,442	528
WAYNE	11,201	6,904	63	33	625	88
WESTMORELAND	80,858	71,792	323	227	2,601	908
WYOMING	6,922	4,363	6	26	344	32
YORK	87,652	51,958	580	418	3,305	331
ATE TOTALS	2,281,127	2,485,967	14,428	11,248	103,392	16,023

OFFICIAL ELECTIONS RESULTS
GENERAL ELECTION OF NOVEMBER 07, 2000
UNITED STATES SENATOR

COUNTY	SANTORUM RICK REPUBLICAN	KLINK RON DEMOCRATIC	SEARER LESTER B. CONSTITUTION	FEATHERMAN JOHN J. LIBERTARIAN	DOMSKE ROBERT E. REFORM
ADAMS	21,621	10,177	225	432	291
ALLEGHENY	247,405	306,410	4,774	4,500	2,119
ARMSTRONG	15,388	11,380	207	247	276
BEAVER	33,609	41,419	309	416	336
BEDFORD	13,791	4,810	128	162	186
BERKS	78,297	48,998	599	2,172	603
BLAIR	30,343	12,863	432	532	485
BRADFORD	16,314	6,150	105	194	133
BUCKS	144,711	103,961	913	2,936	965
BUTLER	44,568	24,816	393	626	443
CAMBRIA	29,514	28,932	640	606	490
CAMERON	1,524	626	14	13	13
CARBON	10,598	8,878	204	161	88
CENTRE	30,002	16,706	306	1,019	416
CHESTER	117,092	63,259	462	3,417	889
CLARION	9,823	5,482	136	165	112
CLEARFIELD	18,582	10,415	301	363	379
CLINTON	6,710	4,333	99	113	73
COLUMBIA	13,405	7,337	154	294	220
CRAWFORD	20,280	11,000	215	241	186
CUMBERLAND	55,799	28,080	674	1,095	787
DAUPHIN	54,986	40,047	919	1,252	805
DELAWARE	128,768	105,712	791	1,952	563
ELK	7,586	5,316	127	154	116
ERIE	58,302	46,726	669	826	488
FAYETTE	19,342	27,502	432	250	204
FOREST	1,406	786	20	18	19
FRANKLIN	33,541	13,594	198	344	294
FULTON	3,761	1,311	16	45	23
GREENE	5,935	7,636	117	111	165
HUNTINGDON	11,185	3,910	155	192	218
INDIANA	17,651	12,761	144	420	167
JEFFERSON	11,370	5,361	161	223	168
JUNIATA	5,912	2,407	80	92	41
LACKAWANNA	40,520	47,363	1,081	390	239
LANCASTER	119,519	47,600	1,032	1,263	493
LAWRENCE	17,672	21,026	151	210	208
LEBANON	28,324	14,517	310	596	236
LEHIGH	63,025	45,148	355	1,257	376
LUZERNE	55,549	51,613	1,243	804	414
LYCOMING	28,773	11,034	302	327	232
MCKEAN	9,804	4,304	132	109	49
MERCER	23,157	22,191	355	254	146
MIFFLIN	9,768	4,021	145	105	52
MONROE	25,524	17,351	253	615	257
MONTGOMERY	174,512	140,507	645	4,222	742
MONTOUR	4,309	1,927	55	65	50
NORTHAMPTON	53,853	42,965	549	992	327
NORTHUMBERLAND	19,029	11,208	297	292	307
PERRY	11,118	4,124	157	190	192
PHILADELPHIA	121,433	398,756	1,731	3,611	1,094
PIKE	9,856	6,138	133	129	65
POTTER	5,043	1,694	28	95	36
SCHUYLKILL	36,175	21,184	380	592	707
SNYDER	9,217	2,909	139	139	107
SOMERSET	19,028	13,129	196	229	209
SULLIVAN	2,046	897	19	30	23
SUSQUEHANNA	11,205	5,344	108	146	143
TIOGA	10,194	3,847	88	186	108
UNION	9,041	3,468	116	174	121
VENANGO	11,846	7,867	179	205	165
WARREN	9,973	5,565	234	132	74
WASHINGTON	36,908	42,934	396	611	2,535
WAYNE	11,762	5,526	114	144	77
WESTMORELAND	80,010	70,201	859	791	666
WYOMING	7,856	3,356	52	104	93
YORK	88,792	46,093	1,429	1,183	785
STATE TOTALS	2,481,962	2,154,908	28,382	45,775	24,089

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OFFICIAL ELECTIONS RESULTS
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COUNTY	FISHER MIKE REPUBLICAN	EISENHOWER JIM DEMOCRATIC	CLYMER JAMES N. CONSTITUTION	HEICKLEN JULIAN P. LIBERTARIAN	LINZEY THOMAS ALAN GREEN
ADAMS	22,195	8,957	195	363	464
ALLEGHENY	280,918	247,363	3,937	3,868	6,399
ARMSTRONG	16,601	9,646	273	292	310
BEAVER	34,774	35,391	420	681	702
BEDFORD	13,860	4,820	104	138	182
BERKS	73,748	49,147	798	2,042	2,433
BLAIR	32,790	10,439	340	442	387
BRADFORD	15,385	6,129	175	276	380
BUCKS	132,370	107,710	2,038	2,671	3,883
BUTLER	46,743	21,014	433	657	766
CAMBRIA	32,069	25,733	619	507	592
CAMERON	1,339	713	51	19	21
CARBON	9,923	8,868	182	153	321
CENTRE	29,782	15,285	262	1,564	1,719
CHESTER	111,893	63,974	696	2,961	3,006
CLARION	10,034	4,838	164	160	193
CLEARFIELD	18,539	10,238	252	359	329
CLINTON	6,440	4,261	104	125	168
COLUMBIA	12,903	7,156	191	298	395
CRAWFORD	20,391	9,640	292	228	472
CUMBERLAND	61,174	22,246	442	917	1,083
DAUPHIN	62,373	32,398	531	927	1,119
DELAWARE	122,125	104,993	952	1,716	2,971
ELK	7,330	5,364	143	152	145
ERIE	60,460	40,348	775	779	1,290
FAYETTE	19,274	24,682	417	283	432
FOREST	1,398	736	24	15	35
FRANKLIN	32,667	12,981	266	429	776
FULTON	3,561	1,383	28	40	47
GREENE	5,942	7,248	129	134	213
HUNTINGDON	11,135	3,858	181	172	242
INDIANA	18,294	11,657	254	317	285
JEFFERSON	11,315	5,262	170	199	193
JUNIATA	6,011	2,229	43	67	57
LACKAWANNA	42,213	41,049	821	418	825
LANCASTER	122,596	41,315	1,714	981	1,990
LAWRENCE	19,011	16,072	217	344	446
LEBANON	30,265	11,608	259	316	432
LEHIGH	57,618	46,062	694	1,089	1,849
LUZERNE	55,797	45,092	1,195	668	1,441
LYCOMING	28,269	10,422	314	306	515
MCKEAN	9,120	4,329	222	125	201
MERCER	23,056	20,315	406	295	423
MIFFLIN	9,970	3,560	86	94	104
MONROE	24,421	17,078	341	395	850
MONTGOMERY	167,183	139,564	950	3,620	4,195
MONTOUR	4,166	1,930	37	59	78
NORTHAMPTON	48,663	44,285	790	864	1,590
NORTHUMBERLAND	18,804	10,356	233	279	532
PERRY	11,900	3,356	134	160	163
PHILADELPHIA	107,185	396,337	1,713	2,490	6,073
PIKE	9,467	6,174	121	110	331
POTTER	4,542	1,918	79	75	100
SCHUYLKILL	33,827	20,498	379	649	889
SNYDER	9,644	2,284	54	125	141
SOMERSET	20,895	10,843	173	213	249
SULLIVAN	1,956	876	23	30	49
SUSQUEHANNA	11,437	4,808	96	175	302
TIOGA	9,527	3,929	193	166	316
UNION	9,206	3,043	80	119	308
VENANGO	11,739	7,577	254	213	237
WARREN	9,163	5,522	336	146	237
WASHINGTON	42,903	37,779	510	707	923
WAYNE	11,700	4,805	94	130	342
WESTMORELAND	82,321	58,565	830	928	1,216
WYOMING	8,068	2,861	67	100	178
YORK	93,645	38,225	1,010	1,175	1,681
STATE TOTALS	2,495,253	1,991,144	30,306	41,519	61,216

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OFFICIAL ELECTIONS RESULTS
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COUNTY	TRUE KATIE REPUBLICAN	CASEY, JR. BOB DEMOCRATIC	RHINE JOHN H. CONSTITUTION	MORRIS JESSICA A. LIBERTARIAN	GOEKE ANNE E. GREEN	BLAIR JAMES R. REFORM
ADAMS	17,320	14,301	129	327	420	169
ALLEGHENY	182,838	338,209	4,058	4,604	7,348	2,464
ARMSTRONG	11,750	14,181	180	287	267	380
BEAVER	23,669	48,779	412	751	731	451
BEDFORD	11,101	7,449	71	150	167	120
BERKS	54,321	69,761	508	1,995	2,268	562
BLAIR	24,427	18,594	301	441	433	338
BRADFORD	12,622	8,977	123	238	324	232
BUCKS	109,580	132,606	940	2,700	4,029	996
BUTLER	34,405	32,569	335	785	858	537
CAMBRIA	20,785	36,993	469	542	617	487
CAMERON	1,024	1,059	13	27	24	18
CARBON	7,635	11,352	269	171	289	99
CENTRE	22,379	22,079	271	728	2,205	302
CHESTER	88,768	85,898	483	3,105	3,627	1,051
CLARION	7,597	7,297	105	184	193	157
CLEARFIELD	13,660	15,180	245	325	317	264
CLINTON	4,674	6,000	124	120	157	74
COLUMBIA	8,980	11,101	138	299	416	200
CRAWFORD	14,961	15,022	180	279	433	177
CUMBERLAND	45,099	38,848	257	729	1,049	370
DAUPHIN	45,147	50,660	457	695	1,002	315
DELAWARE	98,332	131,423	728	1,709	3,020	588
ELK	5,002	7,658	79	151	154	155
ERIE	33,532	66,960	635	946	1,241	514
FAYETTE	33,398	30,943	365	374	369	306
FOREST	1,123	1,119	12	22	33	22
FRANKLIN	26,920	19,309	246	381	581	293
FULTON	2,973	2,004	25	43	34	28
GREENE	3,701	9,367	96	203	205	185
HUNTINGDON	9,188	5,875	65	118	232	167
INDIANA	13,368	16,395	149	364	337	222
JEFFERSON	8,704	7,888	121	209	176	150
JUNIATA	4,464	3,808	43	63	45	32
LACKAWANNA	21,530	66,157	1,263	361	589	208
LANCASTER	116,727	51,205	514	704	2,164	374
LAWRENCE	12,983	24,179	155	410	448	319
LEBANON	24,962	17,901	213	260	391	116
LEHIGH	43,508	61,479	380	1,067	1,713	440
LUZERNE	35,195	67,860	1,358	783	1,336	484
LYCOMING	22,007	16,996	314	339	427	184
MCKEAN	7,613	5,946	138	147	191	63
MERCER	17,977	25,901	360	310	390	193
MIFFLIN	8,298	5,461	60	69	99	33
MONROE	19,431	22,513	232	396	786	272
MONTGOMERY	132,915	174,895	578	3,598	4,528	769
MONTOUR	2,929	3,176	49	58	87	49
NORTHAMPTON	37,428	56,694	672	847	1,514	396
NORTHUMBERLAND	14,120	15,726	234	261	436	231
PERRY	9,229	6,134	74	143	164	89
PHILADELPHIA	76,496	433,509	1,425	2,963	6,547	1,006
PIKE	8,318	7,514	120	113	308	65
POTTER	3,851	2,605	48	82	109	55
SCHUYLKILL	23,999	30,554	337	607	830	514
SNYDER	7,566	4,374	70	143	176	108
SOMERSET	15,827	15,777	147	259	255	214
SULLIVAN	1,549	1,310	15	31	40	29
SUSQUEHANNA	8,698	7,560	84	182	270	91
TIOGA	8,212	5,462	75	132	271	133
UNION	7,153	4,934	85	111	395	108
VENANGO	9,444	9,823	165	216	196	176
WARREN	7,142	7,633	214	167	226	156
WASHINGTON	26,822	52,761	384	866	959	820
WAYNE	9,224	7,690	87	131	311	65
WESTMORELAND	58,764	82,070	708	1,045	1,207	734
WYOMING	5,852	5,064	47	116	173	94
YORK	73,728	61,024	734	985	1,505	463
STATE TOTALS	1,862,934	2,651,551	23,971	41,967	62,642	21,476

COUNTY	HAFER BARBARA REPUBLICAN	KNOLL CATHERINE DEMOCRATIC	MCDERMOTT BAKERJOHN P. CONSTITUTION	FAMULARO JOHN D. LIBERTARIAN	KNOX BARBARA S. GREEN	PATTERSON JOSEPH F. REFORM
ADAMS	20,207	11,006	356	222	607	199
ALLEGHENY	253,619	286,470	5,590	2,894	7,114	2,047
ARMSTRONG	14,420	11,821	281	141	326	249
BEAVER	31,186	41,592	520	422	911	488
BEDFORD	12,524	6,035	129	64	232	113
BERKS	71,208	52,811	918	1,603	2,329	611
BLAIR	27,731	15,348	378	268	501	260
BRADFORD	15,111	6,560	280	131	333	171
BUCKS	130,739	109,382	1,900	2,408	4,214	1,116
BUTLER	40,793	26,679	570	492	921	462
CAMBRIA	23,451	34,168	747	257	750	406
CAMERON	1,190	886	25	16	26	43
CARBON	9,392	9,681	319	119	285	109
CENTRE	25,815	18,751	363	526	2,151	372
CHESTER	107,852	66,098	1,319	2,555	3,865	842
CLARION	8,929	6,012	156	87	232	130
CLEARFIELD	15,270	13,684	263	138	418	270
CLINTON	6,028	4,917	128	53	169	92
COLUMBIA	11,832	8,625	237	128	405	152
CRAWFORD	17,165	13,491	247	148	496	164
CUMBERLAND	59,352	23,235	831	643	1,564	503
DAUPHIN	61,072	33,524	916	584	1,384	468
DELAWARE	118,969	108,118	1,469	1,549	3,337	676
ELK	5,573	7,175	156	48	148	175
ERIE	44,074	58,070	952	596	1,463	439
FAYETTE	28,067	27,054	472	189	479	230
FOREST	1,322	847	17	8	38	18
FRANKLIN	31,921	14,024	427	251	663	303
FULTON	3,379	1,602	32	27	61	25
GREENE	5,264	8,101	119	87	262	118
HUNTINGDON	9,938	4,877	115	62	422	116
INDIANA	16,012	14,025	247	182	421	156
JEFFERSON	9,931	6,692	180	118	211	177
JUNIATA	5,820	2,490	35	43	88	34
LACKAWANNA	32,123	52,204	1,362	407	785	452
LANCASTER	112,073	51,409	1,655	795	2,306	561
LAWRENCE	16,727	20,494	300	233	515	332
LEBANON	29,013	13,742	289	211	460	156
LEHIGH	56,452	48,510	757	821	1,734	432
LUZERNE	47,023	53,960	1,607	557	1,481	532
LYCOMING	25,717	13,036	819	147	502	190
MCKEAN	9,498	4,404	190	88	212	89
MERCER	21,773	21,922	524	213	494	230
MIFFLIN	9,540	4,260	76	51	125	38
MONROE	22,556	18,601	484	428	873	305
MONTGOMERY	163,791	142,583	1,560	3,210	4,635	731
MONTOUR	3,853	2,290	63	34	79	24
NORTHAMPTON	47,195	45,965	1,027	681	1,587	431
NORTHUMBERLAND	17,880	12,402	322	130	493	234
PERRY	11,262	3,930	141	98	235	129
PHILADELPHIA	108,321	399,062	4,011	2,453	6,859	1,168
PIKE	8,972	6,435	221	102	345	82
POTTER	4,499	1,979	69	57	123	87
SCHUYLKILL	31,922	23,085	508	287	866	421
SNYDER	8,677	3,339	101	61	204	100
SOMERSET	17,320	14,297	284	138	330	187
SULLIVAN	1,868	992	37	15	60	17
SUSQUEHANNA	10,144	6,082	137	105	310	101
TIOGA	9,470	3,912	191	146	314	183
UNION	8,360	3,829	87	63	374	95
VENANGO	10,943	8,439	199	119	283	156
WARREN	8,615	6,614	312	65	284	185
WASHINGTON	37,146	43,293	583	483	1,150	599
WAYNE	10,616	5,997	166	88	373	79
WESTMORELAND	73,310	71,749	1,135	619	1,342	690
WYOMING	7,015	3,941	111	55	177	66
YORK	88,602	44,863	1,071	848	2,069	460
STATE TOTALS	2,307,422	2,211,471	41,093	30,867	68,805	21,276

KEY	PARTY	NAME	MAILING ADDRESS	CITY	ZIP	COUNTY	VOTES
OFFICE - STATE TREASURER					**DISTRICT 0**		
1244	REP	HAFER, BARBARA	P O BOX 304	HARRISBURG	17108-0000	ALLEGHENY	2,307,422
1118	DEM	KNOLL, CATHERINE BAKER	1037 CHARTIERS AVE	MCKEES ROCKS	15136-3607	ALLEGHENY	2,211,471
5041	GRN	KNOX, BARBARA S.	RD#1 BOX 357	BLAIRS MILLS	17213-0000	HUNTINGDON	68,805
5061	CST	MCDERMOTT, JOHN P.	9000 PINE RD	PHILADELPHIA	19115-0000	PHILADELPHIA	41,093
5010	LIB	FAMULARO, JOHN D.	1420 LOCUST ST 36-D	PHILADELPHIA	19102-0000	PHILADELPHIA	30,867
5004	REF	PATTERSON, JOSEPH F.	1311 N WASHINGTON AVE	SCRANTON	18509-0000	LACKAWANNA	21,276

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KEY	PARTY	NAME	MAILING ADDRESS	CITY	ZIP	COUNTY	VOTES
OFFICE - REPRESENTATIVE IN CONGRESS					**DISTRICT 1**		
585	DEM	BRADY, ROBERT A	1305 KIMBERLY DR	PHILADELPHIA	19151-0000	PHILADELPHIA	149,621
1331	REP	RUSH, STEVEN N.	1134 WAVERLY ST (FRT)	PHILADELPHIA	19147-0000	PHILADELPHIA	19,920
OFFICE - REPRESENTATIVE IN CONGRESS					**DISTRICT 2**		
90	DEM	FATTAH, CHAKA	4104 WALNUT ST	PHILADELPHIA	19104-0000	PHILADELPHIA	180,021
5019	LIB	KRAWCHUK, KENNETH V.	117 WEST AVE	ELKINS PARK	19027-0000	MONTGOMERY	3,673
OFFICE - REPRESENTATIVE IN CONGRESS					**DISTRICT 3**		
1161	DEM	BORSKI, ROBERT A.	P O BOX 26846	PHILADELPHIA	19134-0000	PHILADELPHIA	130,528
366	REP	DOUGHERTY, CHARLES F.	1314 COTTMAN AVE	PHILADELPHIA	19111-0000	PHILADELPHIA	59,343
OFFICE - REPRESENTATIVE IN CONGRESS					**DISTRICT 4**		
556	REP	HART, MELISSA	PO BOX 435	WEXFORD	15090-0435	ALLEGHENY	145,390
1015	DEM	VAN HORNE, TERRY E.	PO BOX 444	NEW KENSINGTON	15068-0444	WESTMORELAND	100,995
OFFICE - REPRESENTATIVE IN CONGRESS					**DISTRICT 5**		
215	REP	PETERSON, JOHN E.	P O BOX 295	PLEASANTVILLE	16341-0295	VENANGO	147,570
5042	GRN	BELITSKUS, WILLIAM M.	BOX 172B RD1	KANE	16735-0000	MCKEAN	13,857
5015	LIB	MARTIN, THOMAS A.	298 SHULTZ HOLLOW	JULIAN	16844-0000	CENTRE	11,020
OFFICE - REPRESENTATIVE IN CONGRESS					**DISTRICT 6**		
133	DEM	HOLDEN, TIM	31 PEARL ST	SAINT CLAIR	17970-0000	SCHUYLKILL	140,084
1381	REP	KOPEL, THOMAS G.	631 MAIN ST	OLEY	19547-0000	BERKS	71,227
OFFICE - REPRESENTATIVE IN CONGRESS					**DISTRICT 7**		
289	REP	WELDON, CURT	PO BOX 1992	MEDIA	19063-0000	DELAWARE	172,569

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KEY	PARTY	NAME	MAILING ADDRESS	CITY	ZIP	COUNTY	VOTES
----(CONTINUED)------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 13 ----------(CONTINUED)							
120	REP	GREENLEAF, STEWART J.	PO BOX 669	BLUE BELL	19422-0000	MONTGOMERY	126,501
5011	LIB	CAVANAUGH, KEN	3120 W MT KIRK AVE	NORRISTOWN	19403-0000	MONTGOMERY	4,224
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 14 ----------							
1036	DEM	COYNE, WILLIAM J.	307 HALKET ST	PITTSBURGH	15213-0000	ALLEGHENY	147,533
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 15 ----------							
688	REP	TOOMEY, PAT	2336 FOX MEADOW DR	ALLENTOWN	18104-0000	LEHIGH	118,307
488	DEM	O'BRIEN, ED.	PO BOX 447	BETHLEHEM	18013-0000	LEHIGH	103,864
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 16 ----------							
746	REP	PITTS, JOSEPH R.	P O BOX 775	UNIONVILLE	19375-0000	CHESTER	162,403
672	DEM	YORCZYK, BOB	PO BOX 823	EXTON	19341-0823	CHESTER	80,177
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 17 ----------							
510	REP	GERAS, GEORGE W.	732 SOUTH 25TH ST	HARRISBURG	17111-0000	DAUPHIN	166,236
963	DEM	HERRMANN, LESLYE HESS	PO BOX 154	ENOLA	17025-0154	CUMBERLAND	66,190
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 18 ----------							
431	DEM	DOYLE, MIKE	2227 HAMPTON ST	PITTSBURGH	15218-0000	ALLEGHENY	156,131
765	REP	STEPHENS, CRAIG C.	101 MANOR VIEW RD APT 204	PITTSBURGH	15220-0000	ALLEGHENY	68,798
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 19 ----------							
265	REP	PLATTS, TODD	1911 E MARKET ST	YORK	17402-0000	YORK	168,722
707	DEM	SANDERS, JEFF	18380 PRESTON RD	NEW FREEDOM	17349-0000	YORK	61,538

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KEY	PARTY	NAME	MAILING ADDRESS	CITY	ZIP	COUNTY	VOTES
----(CONTINUED)------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 7 ----------(CONTINUED)							
1147	DEM	LENNON, PETER A.	7 HARMIL RD	BROOMALL	19008-0000	DELAWARE	93,687
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 8 ----------							
341	REP	GREENWOOD, JIM	PO BOX 1775	DOYLESTOWN	18901-0000	BUCKS	154,090
1052	DEM	STROUSE, RONALD L.	701 SPRING VALLEY RD	DOYLESTOWN	18901-0000	BUCKS	100,617
5033	REF	HOLMEN, PHILIP C.	1 PINE VALLEY RD	DOYLESTOWN	18901-0000	BUCKS	5,394
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 9 ----------							
681	R/D	SHUSTER, BUD	825 RITCHEY RD	EVERETT	15537-0000	BEDFORD	184,401
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 10 ----------							
539	REP	SHERWOOD, DON	41 SHERWOOD LANE	TUNKHANNOCK	18657-0000	WYOMING	124,830
1281	DEM	CASEY, PAT	29 SUNSET ST	SCRANTON	18509-0000	LACKAWANNA	112,580
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 11 ----------							
274	DEM	KANJORSKI, PAUL E.	103 SOUTH HANOVER ST	NANTICOKE	18634-2296	LUZERNE	131,948
910	REP	URBAN, STEPHEN A.	166 WILLOW ST	WILKES BARRE	18702-0000	LUZERNE	66,699
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 12 ----------							
56	DEM	MURTHA, JOHN P.	109 COLGATE AVE	JOHNSTOWN	15905-0000	CAMBRIA	145,538
1209	REP	CHOBY, BILL	1905 BATES DR	JOHNSTOWN	15905-1718	CAMBRIA	56,575
5053	REF	O'NEIL, JAMES M.	19 W CREEK RD	ROCHESTER MILLS	15717-0000	INDIANA	3,324
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 13 ----------							
658	DEM	HOEFFEL, JOSEPH M	24 WEST AIRY ST	NORRISTOWN	19401-0000	MONTGOMERY	146,026

(CONTINUED)

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KEY	PARTY	NAME	MAILING ADDRESS	CITY	ZIP	COUNTY	VOTES
OFFICE - SENATOR IN THE GENERAL ASSEMBLY ---------- DISTRICT 1 ----------							
1280	DEM	FUMO, VINCENT J.	1208 TASKER ST	PHILADELPHIA	19148-0000	PHILADELPHIA	64,877
1131	REP	JACOB, GEORGE	3026 ARAMINGO AVE	PHILADELPHIA	19134-0000	PHILADELPHIA	15,114
OFFICE - SENATOR IN THE GENERAL ASSEMBLY ---------- DISTRICT 3 ----------							
494	DEM	KITCHEN, SHIRLEY M.	2142 NORTH 12TH ST	PHILADELPHIA	19122-0000	PHILADELPHIA	61,895
OFFICE - SENATOR IN THE GENERAL ASSEMBLY ---------- DISTRICT 5 ----------							
676	DEM	STACK, MIKE	1600 LOCUST ST	PHILADELPHIA	19103-0000	PHILADELPHIA	46,980
483	REP	SALVATORE, HANK	316 BUXMONT ST	PHILADELPHIA	19116-0000	PHILADELPHIA	42,416
OFFICE - SENATOR IN THE GENERAL ASSEMBLY ---------- DISTRICT 7 ----------							
9	DEM	HUGHES, VINCENT	4601 MARKET ST	PHILADELPHIA	19151-0000	PHILADELPHIA	69,777
OFFICE - SENATOR IN THE GENERAL ASSEMBLY ---------- DISTRICT 9 ----------							
105	REP	BELL, CLARENCE D.	400 W 24TH ST	UPLAND	19013-0000	DELAWARE	66,345
OFFICE - SENATOR IN THE GENERAL ASSEMBLY ---------- DISTRICT 11 ----------							
103	R/D	O'PAKE, MICHAEL A.	1527 SCHUYLKILL AVE	READING	19601-1312	BERKS	81,926
5045	GRN	PULLANO, JENNARO	117 BLAIR AVE	READING	19601-0000	BERKS	4,405
OFFICE - SENATOR IN THE GENERAL ASSEMBLY ---------- DISTRICT 13 ----------							
1172	REP	ARMSTRONG, GIBSON E.	20 REFTON RD BOX 43	REFTON	17568-0000	LANCASTER	63,581
1177	DEM	DEHL, RICCI	610 WEST WALNUT ST	LANCASTER	17603-0000	LANCASTER	28,964
OFFICE - SENATOR IN THE GENERAL ASSEMBLY ---------- DISTRICT 15 ----------							
239	REP	PICCOLA, JEFFREY E.	3817 HILLCREST RD	HARRISBURG	17109-0000	DAUPHIN	65,718

(CONTINUED)

KEY	PARTY	NAME	MAILING ADDRESS	CITY	ZIP	COUNTY	VOTES
(CONTINUED) ------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 19 ---------- (CONTINUED)							
5065	CST	PAOLETTA, MICHAEL L.	1771 S MEADOW DR	MECHANICSBURG	17055-0000	CUMBERLAND	2,234
OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 20 ----------							
29	DEM	MASCARA, FRANK	PO BOX 1109	WASHINGTON	15301-1109	WASHINGTON	145,131
776	REP	DAVIS, RONALD J.	2112 BRADY	BETHEL PARK	15102-0000	ALLEGHENY	80,312
OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 21 ----------							
664	REP	ENGLISH, PHIL	PO BOX 1940	ERIE	16507-0000	ERIE	135,164
683	DEM	FLITTER, MARC A.	PO BOX 1181	ERIE	16512-0000	ERIE	87,018

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

No. 2002-14b

OFFICE OF THE SECRETARY OF THE COMMONWEALTH

Harrisburg, **February 14, 2002**

PENNSYLVANIA, SS:

I, C. Michael Weaver, Acting Secretary of the Commonwealth of Pennsylvania, DO HEREBY CERTIFY, That the attached are true and correct copies of the Official Election Results for the year 1998 for the offices of United States Senator, Governor, and United States Congress, as the same appears of record and remains on file in the Bureau of Commissions, Elections and Legislation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of my Office to be affixed, the day and year above written.

C. Michael Weaver

Acting Secretary of the Commonwealth

DEFENDANT'S EXHIBIT 61

PENNSYLVANIA,
DEPARTMENT OF STATE
15:52

BUREAU OF ELECTIONS
OFFICIAL ELECTIONS RESULTS
GENERAL ELECTION OF NOVEMBER 03, 1998
UNITED STATES SENATOR

REPORT ELC50
DATE 12/15/1998
PAGE NO.

COUNTY	SPECTER ARLEN REPUBLICAN	LLOYD BILL DEMOCRATIC	SNYDER DEAN CONSTITUTIONAL	IANNANTUONO JACK LIBERTARIAN
ADAMS	13,740	5,462	454	327
ALLEGHENY	199,654	125,944	8,718	5,602
ARMSTRONG	11,748	5,212	632	244
BEAVER	29,111	20,729	1,037	683
BEDFORD	8,406	3,216	291	83
BERKS	52,787	22,282	1,721	2,045
BLAIR	20,223	6,748	578	307
BRADFORD	12,112	3,932	397	162
BUCKS	91,809	42,976	3,105	3,194
BUTLER	29,798	12,504	1,427	756
CAMBRIA	22,335	21,720	665	348
CAMERON	987	517	64	16
CARBON	7,353	5,218	390	228
CENTRE	20,909	9,041	486	431
CHESTER	71,508	24,611	2,527	2,719
CLARION	6,983	2,666	538	133
CLEARFIELD	12,162	7,415	571	153
CLINTON	5,100	2,837	227	87
COLUMBIA	9,003	4,662	392	156
CRAWFORD	13,763	5,986	628	274
CUMBERLAND	37,643	13,276	1,039	804
DAUPHIN	41,397	17,209	1,539	734
DELAWARE	101,502	44,704	2,930	2,514
ELK	5,175	3,597	239	85
ERIE	43,175	25,616	2,227	1,131
FAYETTE	13,854	13,812	834	413
FOREST	1,052	442	37	14
FRANKLIN	21,704	8,210	718	285
FULTON	2,238	962	50	15
GREENE	4,742	3,991	157	112
HUNTINGDON	6,752	2,280	301	75
INDIANA	14,577	7,856	450	245
JEFFERSON	7,161	3,433	437	114
JUNIATA	4,034	1,720	108	45
LACKAWANNA	38,710	25,492	1,038	627
LANCASTER	69,422	21,108	4,479	1,137
LAWRENCE	14,000	11,167	535	278
LEBANON	19,539	6,089	695	312
LEHIGH	48,627	22,484	2,421	1,750
LUZERNE	44,513	24,205	1,428	920
LYCOMING	19,506	7,134	785	329
MCKEAN	6,332	2,505	228	92
MERCER	15,904	12,122	839	306
MIFFLIN	6,611	2,499	196	80
MONROE	15,393	7,967	513	517
MONTGOMERY	139,956	60,315	3,868	4,627
MONTOUR	2,808	1,223	125	45
NORTHAMPTON	39,679	21,808	1,115	1,273
NORTHUMBERLAND	13,529	7,534	759	294
PERRY	7,374	2,360	285	109
PHILADELPHIA	117,277	177,969	4,237	3,615
PIKE	6,310	2,982	197	128
POTTER	3,177	1,131	133	42
SCHUYLKILL	29,098	13,855	791	537
SNYDER	5,963	1,708	186	63
SOMERSET	7,986	16,203	202	95
SULLIVAN	1,583	651	35	20
SUSQUEHANNA	9,198	3,363	203	141
TIOGA	7,045	2,523	258	140
UNION	5,927	1,872	200	85
VENANGO	10,562	4,226	315	140
WARREN	6,784	2,935	507	111
WASHINGTON	29,289	20,535	1,152	751
WAYNE	8,469	3,105	247	139
WESTMORELAND	54,839	34,778	2,999	1,548
WYOMING	7,166	1,810	154	113
YORK	57,107	22,395	2,338	1,205
STATE TOTALS	1,814,180	1,028,839	68,377	46,103

KEY	PARTY	NAME	MAILING ADDRESS	CITY	ZIP	COUNTY	VOTES
OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 1							
80825	DEM	BRADY, ROBERT A.	PO BOX 22471	PHILADELPHIA	19110-2471	PHILADELPHIA	77,788
80727	REP	HARRISON, WILLIAM M.	1832 MASTER ST	PHILADELPHIA	19121-4908	PHILADELPHIA	15,898
85025	LIB	FEATHERMAN, JOHN	130 SPRUCE ST #16-B	PHILADELPHIA	19106-0000	PHILADELPHIA	1,198
85006	SWC	COLE, NANCY	1226 E MOYAMENSING AVE #2	PHILADELPHIA	19147-0000	PHILADELPHIA	964
OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 2							
80017	DEM	FATTAH, CHAKA	4104 WALNUT ST	PHILADELPHIA	19104-0000	PHILADELPHIA	102,763
81075	REP	MULLIGAN, ANNE MARIE	3417 INDIAN QUEEN LANE	PHILADEPHIA	19129-1520	PHILADELPHIA	16,001
OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 3							
80375	DEM	BORSKI, ROBERT A.	PO BOX 26846	PHILADELPHIA	19134-0000	PHILADELPHIA	66,270
80303	REP	DOUGHERTY, CHARLES F.	1313 FRIENDSHIP ST	PHILADELPHIA	19111-0000	PHILADELPHIA	45,390
OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 4							
80197	DEM	KLINK, RON	3410 LASHAN DR	MURRYSVILLE	15668-0000	WESTMORELAND	103,183
80600	REP	TURZAI, MIKE	801 OAK RD	BRADFORD WOODS	15015-0000	ALLEGHENY	58,485
OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 5							
80330	REP	PETERSON, JOHN E.	PO BOX 295	PLEASANTVILLE	16341-0295	VENANGO	99,502
85005	GRN	BELITSKUS, WILLIAM M.	RD#1 BOX 172B	KANE	16735-0000	MCKEAN	17,734
OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 6							
80372	DEM	HOLDEN, TIM	31 PEARL ST	SAINT CLAIR	17970-0000	SCHUYLKILL	85,374
80237	REP	MECKLEY, JOHN	PO BOX 251	MILTON	17847-0251	NORTHUMBERLAND	54,579

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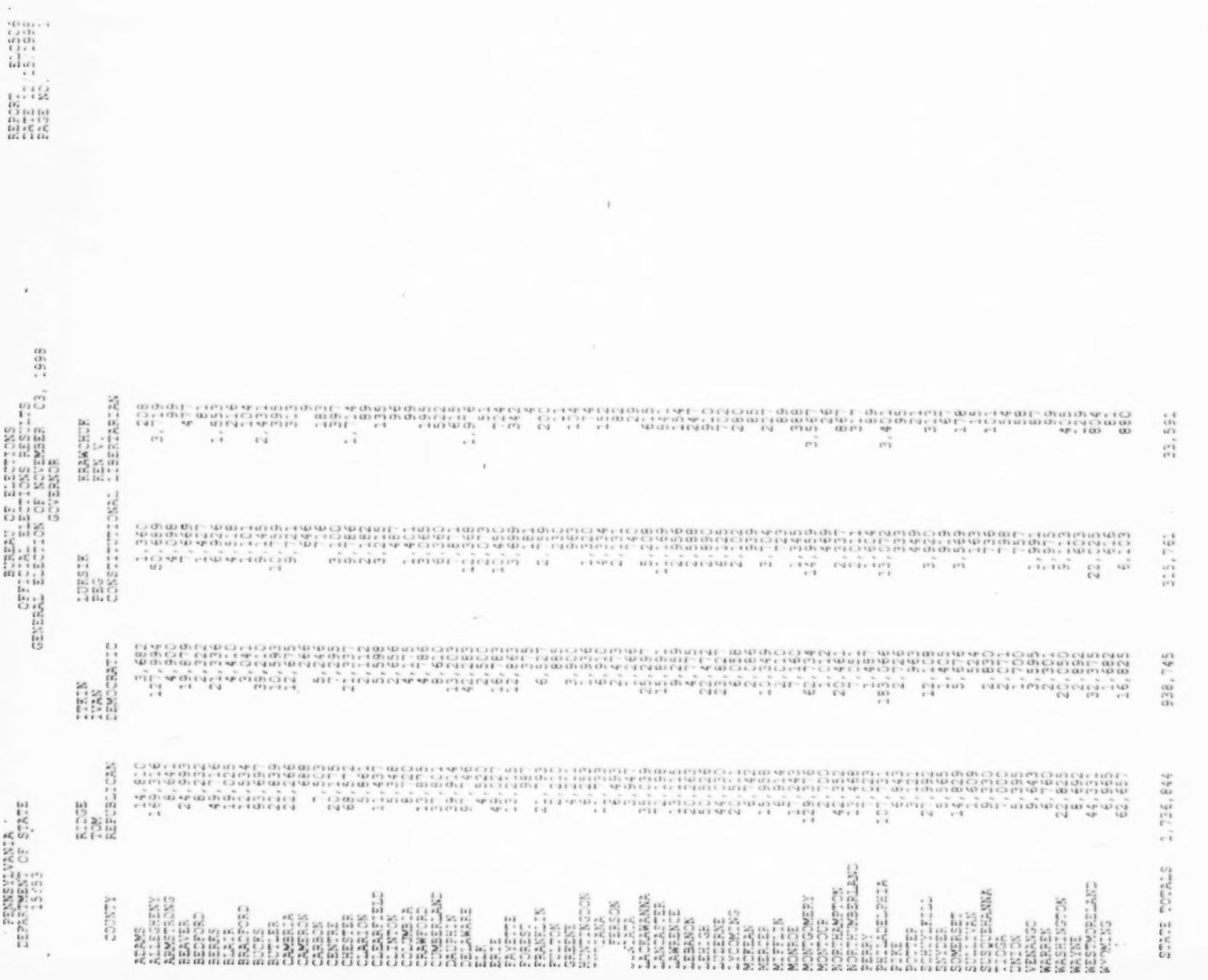

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* KEY	PARTY	NAME	CITY	ZIP	COUNTY	VOTES
					MAILING ADDRESS	
----(CONTINUED)------		OFFICE - REPRESENTATIVE IN CONGRESS		DISTRICT 12		----------(CONTINUED)
80373	REP	HOLLOWAY, TIMOTHY E.			HOLLOWAY'98 PO BOX 500	46,239
----------		OFFICE - REPRESENTATIVE IN CONGRESS		DISTRICT 13		----------
80579	DEM	HOEFEL, JOSEPH M.	ABINGTON	19001-0000	MONTGOMERY	95,105
					1908 LYCOMING AVE	
80505	REP	FOX, JON D.	ELKINS PARK	19027-0000	MONTGOMERY	85,915
					312 GLEN LANE	
85027	LIB	BURKE, THOMAS PATRICK	WYNNEWOOD	19096-0000	MONTGOMERY	3,470
					104 HAVERFORD RD	
----------		OFFICE - REPRESENTATIVE IN CONGRESS		DISTRICT 14		----------
80811	DEM	COYNE, WILLIAM J.	PITTSBURGH	15213-0000	ALLEGHENY	83,355
					307 HALKET ST	
80540	REP	RAVOTTI, BILL	PITTSBURGH	15222-0000	ALLEGHENY	52,745
					1100 LIBERTY AVE APT 206	
85004	SWP	KOLIS, DOROTHY L.	PITTSBURGH	15205-0000	ALLEGHENY	1,625
					1429 POPLAR ST APT 7	
----------		OFFICE - REPRESENTATIVE IN CONGRESS		DISTRICT 15		----------
80632	REP	TOOMEY, PAT	ALLENTOWN	18104-0000	LEHIGH	81,755
					2336 FOX MEADOW DR	
80802	DEM	AFFLERBACH, ROY C.	ALLENTOWN	18104-6129	LEHIGH	66,930
					2821 READING RD	
----------		OFFICE - REPRESENTATIVE IN CONGRESS		DISTRICT 16		----------
80205	REP	PITTS, JOSEPH R.	UNIONVILLE	19375-0000	CHESTER	95,979
					PO BOX 775	
85061	DEM	YORCZYK, ROBERT S.	EXTON	19341-0000	CHESTER	40,092
					371 DEVON DR	
----------		OFFICE - REPRESENTATIVE IN CONGRESS		DISTRICT 17		----------
80663	REP	GEKAS, GEORGE W.	HARRISBURG	17111-0000	DAUPHIN	114,931
					732 S 25TH ST	
----------		OFFICE - REPRESENTATIVE IN CONGRESS		DISTRICT 18		----------
81094	DEM	DOYLE, MIKE	PITTSBURGH	15218-1833	ALLEGHENY	98,363
					2227 HAMPTON ST	
				(CONTINUED)		

* KEY	PARTY	NAME	CITY	ZIP	COUNTY	VOTES
					MAILING ADDRESS	
----------		OFFICE - REPRESENTATIVE IN CONGRESS		DISTRICT 7		----------
80964	REP	WELDON, CURT	ASTON	19014-0000	DELAWARE	119,491
					49 WEATHERVANE RD	
81242	DEM	D'URSO, MARTIN J.	ALDAN	19018-0000	DELAWARE	46,920
					39 RIDLEY AVE	
----------		OFFICE - REPRESENTATIVE IN CONGRESS		DISTRICT 8		----------
80850	REP	GREENWOOD, JIM	DOYLESTOWN	18901-0000	BUCKS	93,697
					PO BOX 2358	
80283	DEM	TUTHILL, BILL	LEVITTOWN	19055-1402	BUCKS	48,320
					28 RAMBLER LANE	
85045	CST	WOLFERTZ, SCOTT	WYCOMBE	18980-0000	BUCKS	3,917
					1067 PARK AVE	
85014	REF	BLAIR, JAMES N.	HATBORO	19040-0000	MONTGOMERY	1,229
					16 LINDA LN	
85002	NLP	BOYCE, CAROLYN	FALLSINGTON	19054-0000	BUCKS	1,022
					46 MAIN ST	
----------		OFFICE - REPRESENTATIVE IN CONGRESS		DISTRICT 9		----------
80243	R/D	SHUSTER, BUD	EVERETT	15537-0000	BEDFORD	125,409
					RD 3 BOX 234C	
----------		OFFICE - REPRESENTATIVE IN CONGRESS		DISTRICT 10		----------
80185	REP	SHERWOOD, DON	TUNKHANNOCK	18657-0000	WYOMING	84,275
					10 BRIDGEOVER	
81121	DEM	CASEY, PATRICK	SCRANTON	18509-0000	LACKAWANNA	83,760
					929 SUNSET ST	
85053	REF	MCLAUGHLIN, THOMAS J.	BARTONSVILLE	18321-0000	MONROE	4,998
					72 FERNWOOD AVE	
----------		OFFICE - REPRESENTATIVE IN CONGRESS		DISTRICT 11		----------
80115	DEM	KANJORSKI, PAUL E.	NANTICOKE	18634-2296	LUZERNE	88,933
					103 S HANOVER ST	
80991	REP	URBAN, STEPHEN A.	WILKES-BARRE	18702-1582	LUZERNE	44,123
					166 WILLOW ST	
----------		OFFICE - REPRESENTATIVE IN CONGRESS		DISTRICT 12		----------
80066	DEM	MURTHA, JOHN P.	JOHNSTOWN	15905-0000	CAMBRIA	100,528
					109 COLGATE AVE	
				(CONTINUED)		

DEPARTMENT OF STATE — OFFICIAL — GENERAL ELECTION NOVEMBER 03, 1998
15:51 — OFFICIAL RETURNS - PUBLIC OFFICE CANDIDATES — DATE 12/15/1998
PAGE NO. 6

KEY	PARTY	NAME	MAILING ADDRESS	CITY	ZIP	COUNTY	VOTES
----(CONTINUED)------ OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 18 ---------- (CONTINUED)							
81245	REP	WALKER, DICK	1204 LINDENDALE DR	PITTSBURGH	15228-0000	ALLEGHENY	46,945
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 19 ----------							
80868	REP	GOODLING, BILL	RD 3 BOX 3026 A	SEVEN VALLEYS	17360-0000	YORK	96,204
81032	DEM	HOFF, LINDA G.	1824 MONROE ST	YORK	17404-0000	YORK	40,674
85016	LIB	SHOEMAKER, GARY M.	600 FAIRBROOK LN	YORK	17402-0000	YORK	5,444
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 20 ----------							
80030	DEM	MASCARA, FRANK	PO BOX 1109	WASHINGTON	15301-1109	WASHINGTON	97,885
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 21 ----------							
81000	REP	ENGLISH, PHIL	PO BOX 1940	ERIE	16507-1940	ERIE	94,518
80534	DEM	KLEMENS, LARRY	38 PENN	GREENVILLE	16125-0000	MERCER	54,591

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

No. 2002-15b

OFFICE OF THE SECRETARY OF THE COMMONWEALTH

Harrisburg, **February 14, 2002**

PENNSYLVANIA, SS:

I, C. Michael Weaver, Acting Secretary of the Commonwealth of Pennsylvania, DO HEREBY CERTIFY, That the attached are true and correct copies of the Official Election Results for the year 1996 for the offices of President, Attorney General, Auditor General, State Treasurer, and United States Congress, as the same appears of record and remains on file in the Bureau of Commissions, Elections and Legislation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of my Office to be affixed, the day and year above written.

C. Michael Weaver

Acting Secretary of the Commonwealth

DEFENDANT'S EXHIBIT 62

PENNSYLVANIA
DEPARTMENT OF STATE
23:05

BUREAU OF ELECTIONS
OFFICIAL ELECTIONS RESULTS
GENERAL ELECTION OF NOVEMBER 05, 1996
PRESIDENT OF THE UNITED STATES

REPORT ELC506
DATE 12/13/1996
PAGE NO. 1

COUNTY	DOLE BOB REPUBLICAN	CLINTON BILL DEMOCRATIC	PHILLIPS HOWARD CONSTITUTIONAL	BROWNE HARRY LIBERTARIAN	PEROT ROSS REFORM	HAGELIN JOHN NATURAL LAW PA
ADAMS	15,338	10,774	72	113	3,186	25
ALLEGHENY	204,067	284,480	5,322	1,892	42,309	545
ARMSTRONG	11,052	11,130	73	47	3,452	25
BEAVER	26,048	39,578	122	202	8,276	53
BEDFORD	10,064	5,954	29	26	2,041	13
BERKS	56,289	49,887	204	1,377	13,788	173
BLAIR	21,282	15,036	123	202	4,014	34
BRADFORD	10,393	7,736	80	67	2,712	20
BUCKS	94,899	103,313	762	3,479	24,544	366
BUTLER	32,038	21,990	133	246	6,145	39
CAMBRIA	20,341	30,391	313	325	7,837	68
CAMERON	1,113	822	5	6	283	2
CARBON	7,193	9,457	73	89	2,992	25
CENTRE	20,935	21,145	75	378	4,173	120
CHESTER	77,029	64,783	323	1,942	14,067	222
CLARION	6,916	5,954	95	26	2,064	16
CLEARFIELD	12,987	11,991	137	56	3,758	26
CLINTON	4,293	5,658	57	33	1,424	18
COLUMBIA	8,234	8,379	18	74	3,654	13
CRAWFORD	14,659	12,943	182	98	3,519	45
CUMBERLAND	43,943	28,749	144	407	5,669	73
DAUPHIN	44,417	40,936	178	358	6,967	115
DELAWARE	92,628	115,946	1,578	2,371	21,883	342
ELK	4,889	5,749	34	36	2,293	12
ERIE	39,884	57,508	597	297	10,386	119
FAYETTE	14,019	26,359	262	104	5,722	66
FOREST	902	964	4	4	325	2
FRANKLIN	25,392	14,980	80	114	4,127	37
FULTON	2,665	1,620	15	12	554	2
GREENE	4,002	7,620	31	24	2,052	7
HUNTINGDON	7,324	5,285	29	31	1,813	13
INDIANA	12,874	13,868	62	88	3,674	17
JEFFERSON	8,156	5,846	76	43	2,322	14
JUNIATA	4,128	2,896	16	23	911	10
LACKAWANNA	26,930	46,377	944	136	8,189	105
LANCASTER	92,875	49,120	692	718	11,601	280
LAWRENCE	13,088	18,993	65	93	4,002	18
LEBANON	22,885	14,187	153	175	4,235	100
LEHIGH	45,103	48,568	483	808	10,947	201
LUZERNE	43,577	60,174	174	280	12,424	188
LYCOMING	21,535	13,516	171	103	3,855	61
MCKEAN	6,838	5,509	95	57	2,350	20
MERCER	17,213	23,003	264	132	5,108	59
MIFFLIN	6,888	5,327	58	32	1,392	21
MONROE	17,326	16,547	262	224	4,650	56
MONTGOMERY	121,047	143,664	497	4,004	24,392	357
MONTOUR	2,785	2,183	18	33	784	8
NORTHAMPTON	35,726	43,959	702	589	9,848	178
NORTHUMBERLAND	13,551	13,418	120	98	5,173	40
PERRY	8,156	4,611	36	85	1,609	18
PHILADELPHIA	85,345	412,988	1,258	3,641	29,329	716
PIKE	6,697	5,509	76	65	1,873	24
POTTER	3,714	2,146	8	17	925	7
SCHUYLKILL	22,920	24,860	82	232	8,471	64
SNYDER	6,742	3,405	12	26	1,451	6
SOMERSET	14,735	12,719	86	53	3,968	30
SULLIVAN	1,352	1,071	3	11	418	3
SUSQUEHANNA	7,354	5,912	34	50	2,266	20
TIOGA	7,382	4,961	38	41	1,993	10
UNION	6,570	3,658	20	26	1,431	19
VENANGO	8,398	8,205	70	75	2,777	24
WARREN	7,056	7,291	124	66	2,504	26
WASHINGTON	27,777	40,952	122	177	8,661	56
WAYNE	8,077	5,928	142	41	2,126	20
WESTMORELAND	62,058	63,686	725	407	16,230	223
WYOMING	4,888	4,049	22	27	1,414	8
YORK	65,188	49,596	692	888	11,652	140
STATE TOTALS	1,801,169	2,215,819	19,552	28,000	430,984	5,783

PENNSYLVANIA
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BUREAU OF ELECTIONS
OFFICIAL ELECTIONS RESULTS
GENERAL ELECTION OF NOVEMBER 05, 1996
ATTORNEY GENERAL

REPORT ELC506
DATE 12/16/1996
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COUNTY	FISHER MIKE REPUBLICAN	KOHN JOE DEMOCRATIC	COLLINS TIMOTHY WILLIAM LIBERTARIAN
ADAMS	18,281	9,423	1,048
ALLEGHENY	245,853	248,584	7,413
ARMSTRONG	12,819	11,343	1,221
BEAVER	31,295	38,926	2,749
BEDFORD	11,958	5,399	401
BERKS	62,787	47,612	4,042
BLAIR	26,164	12,778	1,142
BRADFORD	12,912	6,397	792
BUCKS	111,048	94,796	6,331
BUTLER	35,966	22,257	1,698
CAMBRIA	25,213	31,179	1,819
CAMERON	1,397	724	38
CARBON	8,114	9,212	371
CENTRE	24,235	17,533	1,399
CHESTER	89,657	59,527	5,457
CLARION	8,434	5,688	541
CLEARFIELD	15,814	11,487	928
CLINTON	5,445	4,969	230
COLUMBIA	10,196	8,571	857
CRAWFORD	17,609	10,808	552
CUMBERLAND	48,459	25,293	1,928
DAUPHIN	51,009	36,938	2,000
DELAWARE	110,410	100,907	3,921
ELK	6,346	5,837	347
ERIE	50,495	47,120	1,576
FAYETTE	15,994	24,713	719
FOREST	1,221	844	59
FRANKLIN	28,639	12,962	961
FULTON	3,035	1,528	89
GREENE	4,908	8,098	351
HUNTINGDON	9,272	4,326	484
INDIANA	15,661	13,660	797
JEFFERSON	9,508	5,961	557
JUNIATA	4,847	2,760	202
LACKAWANNA	30,589	40,507	1,087
LANCASTER	101,936	42,591	1,723
LAWRENCE	15,442	18,536	973
LEBANON	24,409	12,993	616
LEHIGH	48,845	44,323	1,988
LUZERNE	43,892	57,019	1,572
LYCOMING	23,090	12,539	715
MCKEAN	8,254	4,560	258
MERCER	20,053	20,374	510
MIFFLIN	8,111	4,559	157
MONROE	19,517	15,226	775
MONTGOMERY	140,629	130,403	7,345
MONTOUR	2,973	2,271	163
NORTHAMPTON	38,502	41,444	1,812
NORTHUMBERLAND	15,519	12,644	786
PERRY	9,738	4,196	344
PHILADELPHIA	95,539	385,944	6,927
PIKE	7,705	5,136	209
POTTER	4,382	1,976	134
SCHUYLKILL	28,663	24,250	1,983
SNYDER	7,786	2,942	433
SOMERSET	17,508	12,780	715
SULLIVAN	1,608	1,045	75
SUSQUEHANNA	9,372	5,303	532
TIOGA	9,115	4,173	441
UNION	7,626	3,515	335
VENANGO	10,950	7,529	589
WARREN	8,799	5,889	351
WASHINGTON	33,889	39,143	2,043
WAYNE	8,940	5,316	290
WESTMORELAND	68,685	60,979	1,773
WYOMING	6,265	3,438	452
YORK	72,834	44,460	1,855
STATE TOTALS	2,088,163	2,026,161	92,961

BUREAU OF ELECTIONS
OFFICIAL ELECTIONS RESULTS
NERAL ELECTION OF NOVEMBER 05, 1996
STATE TREASURER

SNYDER DEAN L. CONSTITUTIONAL	FAMULARO JOHN D. LIBERTARIAN	KLEIN MICHAEL REFORM
944	434	1,2
13,711	4,474	10,9
907	318	8
1,992	1,067	2,0
382	150	3
1,471	2,544	2,0
1,167	588	1,2
413	265	3
3,354	5,136	7,2
2,072	815	1,6
1,871	864	2,0
37	22	1
304	179	6
753	841	1,2
3,166	4,414	3,5
506	162	4
894	355	9
226	62	3
388	236	8
642	223	8
2,672	1,159	2,9
2,931	1,253	3,0
3,704	3,330	5,8
328	175	4
1,389	660	2,4
2,090	290	1,4
28	13	
2,239	472	1,2
72	35	1
267	133	3
333	137	3
703	435	7
578	205	6
156	88	1
2,390	741	1,9
5,638	1,416	4,6
1,111	369	1,1
808	352	1,8
2,511	1,228	2,7
1,486	824	2,6
655	273	1,1
248	124	4
755	298	1,1
195	70	2
630	595	1,6
4,689	6,181	6,1
156	71	1
1,222	1,019	2,6
721	270	1,3
392	194	6
5,360	5,347	9,2
174	135	7
119	60	1
912	676	1,8
308	150	4
776	309	9
47	26	1
277	186	6
247	143	5
235	124	4
378	198	5
374	106	5
1,606	955	2,0
265	106	7
3,946	962	4,0
186	159	4
3,043	1,401	3,9
88,452	56,602	119,1

PENNSYLVANIA
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BUREAU OF ELECTIONS
OFFICIAL ELECTIONS RESULTS
GENERAL ELECTION OF NOVEMBER 05, 19
AUDITOR GENERAL

COUNTY	NYCE BOB REPUBLICAN	CASEY, JR. BOB DEMOCRATIC	LORD ROBERT P. CONSTITUTIONAL	SHEPPS SHARON K. LIBERTARIAN
ADAMS	13,255	14,293	267	890
ALLEGHENY	282,445	296,258	6,525	9,414
ARMSTRONG	9,449	14,297	666	840
BEAVER	22,299	47,119	951	2,483
BEDFORD	9,031	8,202	171	338
BERKS	53,647	55,683	1,031	4,931
BLAIR	16,860	21,793	479	759
BRADFORD	9,549	9,647	258	763
BUCKS	102,317	100,555	1,637	7,524
BUTLER	27,763	29,636	611	1,611
CAMBRIA	16,913	38,797	1,051	1,464
CAMERON	901	1,235	15	41
CARBON	7,069	10,780	220	321
CENTRE	18,207	24,682	348	1,785
CHESTER	82,615	62,112	1,201	7,800
CLARION	5,959	7,924	278	473
CLEARFIELD	10,085	17,100	349	711
CLINTON	3,785	6,611	160	203
COLUMBIA	7,428	11,478	248	638
CRAWFORD	14,545	13,369	369	662
CUMBERLAND	39,426	35,633	559	1,835
DAUPHIN	40,047	47,175	662	1,979
DELAWARE	101,026	108,375	1,786	4,780
ELK	3,319	8,963	137	312
ERIE	42,615	53,097	1,133	1,683
FAYETTE	11,281	29,570	670	617
FOREST	960	1,065	33	69
FRANKLIN	22,542	19,180	567	1,149
FULTON	2,421	2,092	32	114
GREENE	3,496	9,359	121	337
HUNTINGDON	6,357	7,362	159	341
INDIANA	12,105	16,736	251	930
JEFFERSON	6,767	8,682	227	459
JUNIATA	3,402	4,175	55	179
LACKAWANNA	17,382	60,713	1,045	667
LANCASTER	83,274	57,713	2,590	2,328
LAWRENCE	11,552	22,508	389	973
LEBANON	19,540	17,637	324	689
LEHIGH	49,264	43,986	726	2,428
LUZERNE	31,815	72,671	683	1,170
LYCOMING	17,514	18,544	410	524
MCKEAN	6,835	6,100	181	239
MERCER	16,461	24,299	478	533
MIFFLIN	5,880	6,572	77	171
MONROE	18,462	16,717	419	802
MONTGOMERY	134,399	129,925	1,414	10,262
MONTOUR	2,238	3,270	81	142
NORTHAMPTON	43,022	38,603	799	1,704
NORTHUMBERLAND	11,197	17,712	379	617
PERRY	7,592	6,254	150	348
PHILADELPHIA	84,966	388,522	3,395	8,459
PIKE	6,605	6,271	128	216
POTTER	3,451	2,838	57	136
SCHUYLKILL	20,716	32,321	730	1,599
SNYDER	5,838	4,981	109	372
SOMERSET	14,076	15,795	510	673
SULLIVAN	1,294	1,358	23	70
SUSQUEHANNA	6,653	8,077	132	629
TIOGA	7,364	5,893	158	456
UNION	5,762	5,201	105	374
VENANGO	8,310	9,906	230	585
WARREN	6,810	7,327	754	397
WASHINGTON	25,715	47,130	836	2,363
WAYNE	6,622	7,979	230	197
WESTMORELAND	52,843	74,878	1,576	1,997
WYOMING	4,058	5,763	127	284
YORK	59,439	57,261	1,015	2,595
STATE TOTALS	1,706,835	2,367,760	43,487	103,234

PENNSYLVANIA
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BUREAU OF ELECTIONS
COUNTY VOTE BREAKDOWN
1996 GENERAL ELECTION CANDIDATES

REPORT ELC743
DATE 12/30/1996
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REPRESENTATIVE IN CONGRESS ---------- DISTRICT 1 ----------

FOGLIETTA, THOMAS M. (DEM) PHILADELPHIA COUNTY RESIDENT
PO BOX 40078, PHILADELPHIA, PA 19106-0000

DELAWARE	-	14,250	PHILADELPHIA - 130,960
TOTAL VOTES	-	145,210	

CELLA, JAMES D. (REP) PHILADELPHIA COUNTY RESIDENT
2829 S. SMEDLEY ST, PHILADELPHIA, PA 19145-0000

DELAWARE	-	6,961	PHILADELPHIA - 13,773
TOTAL VOTES	-	20,734	

REPRESENTATIVE IN CONGRESS ---------- DISTRICT 2 ----------

FATTAH, CHAKA (DEM) PHILADELPHIA COUNTY RESIDENT
4104 WALNUT ST, PHILADELPHIA, PA 19104-0000

DELAWARE	-	8,063	PHILADELPHIA - 160,824
TOTAL VOTES	-	168,887	

MURPHY, LARRY G. (REP) PHILADELPHIA COUNTY RESIDENT
700 B WOLCOTT DR, PHILADELPHIA, PA 19118-0000

DELAWARE	-	3,785	PHILADELPHIA - 19,262
TOTAL VOTES	-	23,047	

REPRESENTATIVE IN CONGRESS ---------- DISTRICT 3 ----------

BORSKI, ROBERT A. (DEM) PHILADELPHIA COUNTY RESIDENT
PO BOX 26846, PHILADELPHIA, PA 19114-0000

PHILADELPHIA	-	121,120	
TOTAL VOTES	-	121,120	

MCCOLGAN, JOSEPH M. (REP) PHILADELPHIA COUNTY RESIDENT
11821 BRANDON RD, PHILADELPHIA, PA 19154-0000

PHILADELPHIA	-	54,681	
TOTAL VOTES	-	54,681	

REPRESENTATIVE IN CONGRESS ---------- DISTRICT 4 ----------

KLINK, RON (DEM) WESTMORELAND COUNTY RESIDENT
141 RENFER ST, PITTSBURGH, PA 15237-0000

ALLEGHENY	-	19,282	BEAVER - 51,104
LAWRENCE	-	25,629	WESTMORELAND - 36,963
TOTAL VOTES	-	142,621	

BUTLER - 9,643

(CONTINUED)

(CONTINUED)------- REPRESENTATIVE IN CONGRESS ---------- DISTRICT 6 ----------(CONTINUED)

LIST, THOMAS E. (NLP) BERKS COUNTY RESIDENT
920 IMPERIAL DR, MOHNTON, PA 19540-0000

						TOTAL VOTES	1,475
BERKS	863	MONTGOMERY	26	NORTHUMBERLAND	118		
SCHUYLKILL	468						

---------- REPRESENTATIVE IN CONGRESS ---------- DISTRICT 7 ----------

WELDON, CURT (REP) DELAWARE COUNTY RESIDENT
49 WEATHERVANE RD, ASTON, PA 19014-0000

				TOTAL VOTES	165,087
CHESTER	31,292	DELAWARE	125,682	MONTGOMERY	8,113

INNELLI, JOHN F. (DEM) DELAWARE COUNTY RESIDENT
8 VALLEY VIEW RD, MEDIA, PA 19063-0000

				TOTAL VOTES	79,875
CHESTER	12,666	DELAWARE	62,371	MONTGOMERY	4,830

PRONCHIK, JOHN (NLP) DELAWARE COUNTY RESIDENT
328 PROSPECT AVE, CLIFTON HEIGHTS, PA 19018-0000

				TOTAL VOTES	1,688
CHESTER	664	DELAWARE	958	MONTGOMERY	66

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---------- REPRESENTATIVE IN CONGRESS ---------- DISTRICT 8 ----------

GREENWOOD, JIM (REP) BUCKS COUNTY RESIDENT
PO BOX 2358, DOYLESTOWN, PA 18901-0000

				TOTAL VOTES	133,749
BUCKS	127,479	MONTGOMERY	6,270		

MURRAY, JOHN P. (DEM) BUCKS COUNTY RESIDENT
PO BOX 234, WASHINGTON CROSS , PA 18977-1108

				TOTAL VOTES	79,856
BUCKS	77,181	MONTGOMERY	2,675		

PIOTROWSKI, RICHARD J. (LIB) BUCKS COUNTY RESIDENT
260 STATION RD, QUAKERTOWN, PA 18951-0000

				TOTAL VOTES	6,991
BUCKS	6,712	MONTGOMERY	279		

BOOTH, DAVID A. (CST) BUCKS COUNTY RESIDENT
2949 BROWN AVE APT C-4, BENSALEM, PA 19020-0000

				TOTAL VOTES	5,714
BUCKS	5,549	MONTGOMERY	165		

(CONTINUED)------- REPRESENTATIVE IN CONGRESS ---------- DISTRICT 4 ----------(CONTINUED)

ADAMETZ, PAUL T. (REP) BUTLER COUNTY RESIDENT
PO BOX 1852, CRANBERRY TWP, PA 16066-0000

						TOTAL VOTES	79,448
ALLEGHENY	13,237	BEAVER	22,519	BUTLER	10,958		
LAWRENCE	10,211	WESTMORELAND	22,523				

---------- REPRESENTATIVE IN CONGRESS ---------- DISTRICT 5 ----------

PETERSON, JOHN E. (REP) VENANGO COUNTY RESIDENT
PO BOX 295, PLEASANTVILLE, PA 16341-0295

						TOTAL VOTES	116,303
ARMSTRONG	193	CAMERON	1,418	CENTRE	19,987		
CLARION	8,912	CLEARFIELD	13	CLINTON	5,187		
CRAWFORD	5,340	ELK	7,236	FOREST	1,448		
JEFFERSON	10,229	LYCOMING	3,720	MCKEAN	9,054		
POTTER	4,650	TIOGA	9,292	UNION	7,368		
VENANGO	11,866	WARREN	10,390				

RUDY, RUTH C. (DEM) CENTRE COUNTY RESIDENT
RD 1 BOX 570, CENTRE HALL, PA 16828-0000

						TOTAL VOTES	76,627
ARMSTRONG	74	CAMERON	795	CENTRE	19,990		
CLARION	5,354	CLEARFIELD	0	CLINTON	5,723		
CRAWFORD	1,905	ELK	5,593	FOREST	740		
JEFFERSON	5,880	LYCOMING	1,627	MCKEAN	4,841		
POTTER	2,008	TIOGA	4,730	UNION	4,140		
VENANGO	7,349	WARREN	5,878				

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---------- REPRESENTATIVE IN CONGRESS ---------- DISTRICT 6 ----------

HOLDEN, TIM (DEM) SCHUYLKILL COUNTY RESIDENT
31 PEARL ST, SAINT CLAIR, PA 17970-0000

						TOTAL VOTES	115,193
BERKS	65,333	MONTGOMERY	3,840	NORTHUMBERLAND	7,347		
SCHUYLKILL	38,673						

LEINBACH, CHRISTIAN Y. (REP) BERKS COUNTY RESIDENT
STE R1 529 READING AVE, WEST READING, PA 19611-0000

						TOTAL VOTES	80,061
BERKS	52,730	MONTGOMERY	2,822	NORTHUMBERLAND	7,242		
SCHUYLKILL	17,267						

(CONTINUED)

REPRESENTATIVE IN CONGRESS — DISTRICT 11

KANJORSKI, PAUL E. (DEM) LUZERNE COUNTY RESIDENT
103 S. HANOVER ST., NANTICOKE, PA 18634-2296

TOTAL VOTES - 128,258

CARBON	13,046	COLUMBIA	12,743	LUZERNE	76,345
MONROE	11,218	MONTOUR	3,662	NORTHUMBERLAND	11,254

URBAN, STEPHEN A. (REP) LUZERNE COUNTY RESIDENT
166 WILLOW ST, WILKES-BARRE, PA 18702-1582

TOTAL VOTES - 60,339

CARBON	5,409	COLUMBIA	7,178	LUZERNE	32,512
MONROE	8,722	MONTOUR	2,159	NORTHUMBERLAND	4,359

REPRESENTATIVE IN CONGRESS — DISTRICT 12

MURTHA, JOHN P. (DEM) CAMBRIA COUNTY RESIDENT
109 COLGATE AVE, JOHNSTOWN, PA 15905-0000

TOTAL VOTES - 136,815

ARMSTRONG	15,130	CAMBRIA	46,852	CLARION	281
FAYETTE	9,949	INDIANA	19,957	SOMERSET	20,718
WESTMORELAND	23,928				

CHOBY, BILL (REP) CAMBRIA COUNTY RESIDENT
1905 BATES DR, JOHNSTOWN, PA 15905-0000

TOTAL VOTES - 58,643

ARMSTRONG	9,840	CAMBRIA	11,684	CLARION	145
FAYETTE	4,552	INDIANA	10,319	SOMERSET	10,597
WESTMORELAND	11,506				

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REPRESENTATIVE IN CONGRESS — DISTRICT 13

FOX, JON D. (REP) MONTGOMERY COUNTY RESIDENT
312 GLEN LANE, ELKINS PARK, PA 19027-0000

TOTAL VOTES - 120,304

MONTGOMERY - 120,304

HOEFFEL, JOSEPH M. (DEM) MONTGOMERY COUNTY RESIDENT
1908 LYCOMING AVE, ABINGTON, PA 19001-0000

TOTAL VOTES - 120,220

MONTGOMERY - 120,220

BURKE, THOMAS PATRICK (LIB) MONTGOMERY COUNTY RESIDENT
3933 SENECA CT, SKIPPACK, PA 19474-0000

TOTAL VOTES - 4,930

MONTGOMERY - 4,930

(CONTINUED)

REPRESENTATIVE IN CONGRESS — DISTRICT 9

SHUSTER, BUD (REP) BEDFORD COUNTY RESIDENT
RD 3 BOX 234C, EVERETT, PA 15537-0000

TOTAL VOTES - 142,105

BEDFORD	13,995	BLAIR	32,156	CENTRE	4,237
CLEARFIELD	20,245	FRANKLIN	32,484	FULTON	3,520
HUNTINGDON	9,836	JUNIATA	5,479	MIFFLIN	8,362
PERRY	3,232	SNYDER	8,559		

KEMMLER, MONTE (DEM) MIFFLIN COUNTY RESIDENT
PO BOX 333, NEWTON HAMILTON, PA 17075-0333

TOTAL VOTES - 50,650

BEDFORD	4,021	BLAIR	8,475	CENTRE	1,525
CLEARFIELD	8,210	FRANKLIN	11,421	FULTON	1,298
HUNTINGDON	4,580	JUNIATA	2,404	MIFFLIN	4,840
PERRY	1,111	SNYDER	2,765		

REPRESENTATIVE IN CONGRESS — DISTRICT 10

MCDADE, JOSEPH M. (REP) LACKAWANNA COUNTY RESIDENT
307 CLARK AVENUE, CLARKS SUMMIT, PA 18411-0000

TOTAL VOTES - 124,670

BRADFORD	13,358	LACKAWANNA	49,708	LYCOMING	18,010
MONROE	8,111	PIKE	7,443	SULLIVAN	1,582
SUSQUEHANNA	10,156	WAYNE	9,499	WYOMING	6,803

CULLEN, JOE (DEM) LACKAWANNA COUNTY RESIDENT
1406 WOODLAWN ST, DUNMORE, PA 18509-0000

TOTAL VOTES - 75,536

BRADFORD	6,180	LACKAWANNA	30,505	LYCOMING	12,563
MONROE	7,315	PIKE	5,418	SULLIVAN	1,061
SUSQUEHANNA	4,369	WAYNE	5,177	WYOMING	2,948

MCLAUGHLIN, THOMAS J. (REP) MONROE COUNTY RESIDENT
72 FERNWOOD AVE, BARTONSVILLE, PA 18321-0000

TOTAL VOTES - 8,311

BRADFORD	1,170	LACKAWANNA	1,771	LYCOMING	1,108
MONROE	992	PIKE	819	SULLIVAN	144
SUSQUEHANNA	924	WAYNE	829	WYOMING	554

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---------- REPRESENTATIVE IN CONGRESS ---------- DISTRICT 16 ----------

PITTS, JOSEPH R. (REP) CHESTER COUNTY RESIDENT
905 MITCHELL FARM LANE, KENNETT SQUARE, PA 19348-0000 — TOTAL VOTES - 124,511

CHESTER - 63,711 LANCASTER - 60,800

BLAINE, JAMES G. (DEM) CHESTER COUNTY RESIDENT
430 W STREET RD, KENNETT SQUARE, PA 19348-0000 — TOTAL VOTES - 78,598

CHESTER - 42,844 LANCASTER - 35,754

YORCZYK, ROBERT S. (REF) CHESTER COUNTY RESIDENT
371 DEVON DR, EXTON, PA 19341-0000 — TOTAL VOTES - 6,485

CHESTER - 4,089 LANCASTER - 2,396

---------- REPRESENTATIVE IN CONGRESS ---------- DISTRICT 17 ----------

GEKAS, GEORGE W. (REP) DAUPHIN COUNTY RESIDENT
732 SOUTH 25TH ST, HARRISBURG, PA 17111-0000 — TOTAL VOTES - 150,678

CUMBERLAND - 16,137 DAUPHIN - 63,694 LANCASTER - 36,175
LEBANON - 26,693 PERRY - 7,979

KETTL, PAUL (DEM) LANCASTER COUNTY RESIDENT
434 SUNRISE BLVD, ELIZABETHTOWN, PA 17022-0000 — TOTAL VOTES - 57,911

CUMBERLAND - 5,329 DAUPHIN - 26,828 LANCASTER - 12,295
LEBANON - 11,445 PERRY - 2,014

---------- REPRESENTATIVE IN CONGRESS ---------- DISTRICT 18 ----------

DOYLE, MIKE (DEM) ALLEGHENY COUNTY RESIDENT
2227 HAMPTON ST, PITTSBURGH, PA 15218-0000 — TOTAL VOTES - 120,410

ALLEGHENY - 120,410

FAWCETT, DAVID B. (REP) ALLEGHENY COUNTY RESIDENT
6228 CALIFORNIA AVE, OAKMONT, PA 15139-0000 — TOTAL VOTES - 86,829

ALLEGHENY - 86,829

CALIGIURI, RICHARD EDWARD (IND) ALLEGHENY COUNTY RESIDENT
1006 S TRENTON AVE, WILKINSBURG, PA 15221-0000 — TOTAL VOTES - 6,859

ALLEGHENY - 6,859

(CONTINUED)

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(CONTINUED) ------- REPRESENTATIVE IN CONGRESS ---------- DISTRICT 13 ---------- (CONTINUED)

RYAN, BILL (NLP) MONTGOMERY COUNTY RESIDENT
836 TYSON AVE, ABINGTON, PA 19001-0000 — TOTAL VOTES - 525

MONTGOMERY - 525

---------- REPRESENTATIVE IN CONGRESS ---------- DISTRICT 14 ----------

COYNE, WILLIAM J. (DEM) ALLEGHENY COUNTY RESIDENT
307 HALKET ST, PITTSBURGH, PA 15213-0000 — TOTAL VOTES - 122,922

ALLEGHENY - 122,922

RAVOTTI, BILL (REP) ALLEGHENY COUNTY RESIDENT
1006 COUNTRYSIDE DR, MCKEES ROCKS, PA 15136-0000 — TOTAL VOTES - 78,921

ALLEGHENY - 78,921

SCHERRER, PAUL (SEP) ALLEGHENY COUNTY RESIDENT
7604 RACE ST, PITTSBURGH, PA 15200-0000 — TOTAL VOTES - 713

ALLEGHENY - 713

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---------- REPRESENTATIVE IN CONGRESS ---------- DISTRICT 15 ----------

MCHALE, PAUL (DEM) LEHIGH COUNTY RESIDENT
523 EIGHTH AVE, BETHLEHEM, PA 18018-0000 — TOTAL VOTES - 109,812

LEHIGH - 55,799 MONTGOMERY 4,131 NORTHAMPTON - 49,882

KILBANKS, BOB (REP) NORTHAMPTON COUNTY RESIDENT
911 NORTHAMPTON ST, EASTON, PA 18042-0000 — TOTAL VOTES - 82,803

LEHIGH - 43,032 MONTGOMERY 5,362 NORTHAMPTON - 34,409

SABATINE, NICHOLAS R., III (REF) NORTHAMPTON COUNTY RESIDENT
1076 WASHINGTON BLVD, BANGOR, PA 18013-0000 — TOTAL VOTES - 6,931

LEHIGH - 1,023 MONTGOMERY 414 NORTHAMPTON - 3,594

FAUST, PHILIP E. (NLP) LEHIGH COUNTY RESIDENT
821 N GLENWOOD ST, ALLENTOWN, PA 18104-0000 — TOTAL VOTES - 812

LEHIGH - 412 MONTGOMERY 17 NORTHAMPTON - 384

(CONTINUED)------- REPRESENTATIVE IN CONGRESS ---------- DISTRICT 21 ----------(CONTINUED)

DINICOLA, RONALD A. (DEM) ERIE COUNTY RESIDENT
PO BOX 3538, ERIE, PA 16508-0000

TOTAL VOTES - 104,004

BUTLER	- 16,069	CRAWFORD	- 10,124	ERIE	- 54,972
MERCER	- 22,839				

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(CONTINUED)------- REPRESENTATIVE IN CONGRESS ---------- DISTRICT 18 ----------(CONTINUED)

EMMERICH, RALPH A. (NLP) ALLEGHENY COUNTY RESIDENT
1883 BEULAH RD, PENN HILLS, PA 15235-0000

TOTAL VOTES - 883

ALLEGHENY - 883

---------- REPRESENTATIVE IN CONGRESS ---------- DISTRICT 19 ----------

GOODLING, BILL (REP) YORK COUNTY RESIDENT
PO BOX 96, JACOBUS, PA 17407-0000

TOTAL VOTES - 130,716

ADAMS	- 17,039	CUMBERLAND	- 37,909	YORK	- 75,768

CHRONISTER, SCOTT L. (DEM) YORK COUNTY RESIDENT
249 LOCUST ST, HANOVER, PA 17331-0000

TOTAL VOTES - 74,944

ADAMS	- 11,447	CUMBERLAND	- 17,209	YORK	- 46,288

WORLEY, FRANCIS (FWC) ADAMS COUNTY RESIDENT
225 LATIMORE VALLEY RD, YORK SPRINGS, PA 17372-0000

TOTAL VOTES - 3,194

ADAMS	- 822	CUMBERLAND	- 1,179	YORK	- 1,193

147

---------- REPRESENTATIVE IN CONGRESS ---------- DISTRICT 20 ----------

MASCARA, FRANK (DEM) WASHINGTON COUNTY RESIDENT
PO BOX 1109, WASHINGTON, PA 15301-0000

TOTAL VOTES - 113,394

ALLEGHENY	- 21,556	FAYETTE	- 18,023	GREENE	- 8,937
WASHINGTON	- 43,964	WESTMORELAND	- 20,914		

MCCORMICK, MIKE (REP) WASHINGTON COUNTY RESIDENT
135 HEMLOCK DR, MCMURRAY, PA 15317-0000

TOTAL VOTES - 97,004

ALLEGHENY	- 30,775	FAYETTE	- 9,838	GREENE	- 4,592
WASHINGTON	- 33,015	WESTMORELAND	- 18,784		

---------- REPRESENTATIVE IN CONGRESS ---------- DISTRICT 21 ----------

ENGLISH, PHIL (REP) ERIE COUNTY RESIDENT
3632 MAPLE STREET, ERIE, PA 16508-0000

TOTAL VOTES - 106,875

BUTLER	- 23,512	CRAWFORD	- 12,600	ERIE	- 50,597
MERCER	- 20,166				

(CONTINUED)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

No. 2002-16b

OFFICE OF THE SECRETARY OF THE COMMONWEALTH

Harrisburg, **February 14, 2002**

PENNSYLVANIA, SS:

I, C. Michael Weaver, Acting Secretary of the Commonwealth of Pennsylvania, DO HEREBY CERTIFY, That the attached are true and correct copies of the Official Election Results for the year 1994 for the offices of United States Senator, Governor, and United States Congress, as the same appears of record and remains on file in the Bureau of Commissions, Elections and Legislation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of my Office to be affixed, the day and year above written.

C. Michael Weaver

Acting Secretary of the Commonwealth

DEFENDANT'S EXHIBIT 63

PENNSYLVANIA
DEPARTMENT OF STATE
13:56

BUREAU OF ELECTIONS
GENERAL ELECTION NOVEMBER 08, 1994
RETURNS - PUBLIC OFFICE CANDIDATES

REPORT ELC616
DATE 12/21/1994
PAGE NO. 1

OFFICIAL

OFFICIAL

KEY PARTY NAME | MAILING ADDRESS | CITY | ZIP | COUNTY | VOTES

SENATOR

DISTRICT 0

40867 REP SANTORUM	127 SEMINOLE DR	PITTSBURGH	15228-1528	ALLEGHENY	1,735,691
41121 DEM WOFFORD,	1420 WALNUT ST STE 800	PHILADELPHIA	19102-0000	MONTGOMERY	1,648,481
45057 PAT BLOUGH,	23-1 POTTERS PL	HOLLAND	18966-0000	BUCKS	69,825
45011 LIB ERNSBERG	865 MEADOWOOD LANE	WARMINSTER	18974-0000	BUCKS	59,115
SCATTERE					269

KEY PARTY NAME	MAILING ADDRESS	CITY	ZIP	COUNTY	VOTES
OFFICE - REPRESENTATIVE IN CONGRESS			**DISTRICT 1**		
41252 DEM FOGLIETTA, THOMAS M.	602 WASHINGTON SQ HOPKINS HSE	PHILADELPHIA	19106-0000	PHILADELPHIA	99,669
40989 REP GORDON, ROGER F.	2602 APOLLO PLZ	PHILADELPHIA	19153-1104	PHILADELPHIA	22,595
OFFICE - REPRESENTATIVE IN CONGRESS			**DISTRICT 2**		
40221 DEM FATTAH, CHAKA	4104 WALNUT ST	PHILADELPHIA	19104-0000	PHILADELPHIA	120,563
41141 REP WATSON, LAWRENCE R.	5601 WYNNEFIELD AVE	PHILADELPHIA	19131-0000	PHILADELPHIA	19,824
OFFICE - REPRESENTATIVE IN CONGRESS			**DISTRICT 3**		
40830 DEM BORSKI, ROBERT A.	PO BOX 26846	PHILADELPHIA	19134-0000	PHILADELPHIA	92,702
40987 REP HASHER, JAMES C.	4711 CONVENT PLACE	PHILADELPHIA	19114-0000	PHILADELPHIA	55,289
OFFICE - REPRESENTATIVE IN CONGRESS			**DISTRICT 4**		
40342 DEM KLINK, RON	226 CONNOR DR	JEANNETTE	15644-0000	WESTMORELAND	119,115
41122 REP PEGLOW, ED	3709 GREEN GARDEN RD	ALIQUIPPA	15001-0000	BEAVER	66,509
OFFICE - REPRESENTATIVE IN CONGRESS			**DISTRICT 5**		
40674 D/R CLINGER, BILL	PO BOX 631	WARREN	16365-0000	WARREN	145,335
OFFICE - REPRESENTATIVE IN CONGRESS			**DISTRICT 6**		
40392 DEM HOLDEN, TIM	31 PEARL ST	ST CLAIR	17970-0000	SCHUYLKILL	90,823
45037 REP LEVERING, FRED	1058 BRANDYWINE RD	WYOMISSING	19601-0000	BERKS	68,610
OFFICE - REPRESENTATIVE IN CONGRESS			**DISTRICT 7**		
40729 REP WELDON, CURT	49 WEATHERVANE RD	ASTON	19014-0000	DELAWARE	137,480
40753 DEM NICHOLS, SARA	PO BOX 185	PAOLI	19301-0000	CHESTER	59,845
OFFICE - REPRESENTATIVE IN CONGRESS			**DISTRICT 8**		
40472 REP GREENWOOD, JIM	PO BOX 2358	DOYLESTOWN	18901-0000	BUCKS	110,499
41070 DEM MURRAY, JOHN P.	10 CANAL RUN W.	WASHINGTON CROSS.	18977-1108	BUCKS	44,559

(CONTINUED)

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KEY PARTY NAME	MAILING ADDRESS	CITY	ZIP	COUNTY	VOTES
OFFICE - GOVERNOR			**DISTRICT 0**		
40400 REP RIDGE, TOM LT. GOV.: SCHWEIKER, MARK S.	PO BOX 11667	HARRISBURG	17108-1667	ERIE	1,627,976
40872 DEM SINGEL, MARK S. LT. GOV.: FOLEY, TOM	PO BOX 11624	HARRISBURG	17108-0000	CAMBRIA	1,430,099
45054 CST LUKSIK, PEG LT. GOV.: CLYMER, JAMES	53 WYOMING ST	JOHNSTOWN	15905-0000	CAMBRIA	468,269
45035 LIB FALLON, PATRICK LT. GOV.: HATTON, VINCENT F.	RR1, BOX 375	TANNERSVILLE	18372-0000	MONROE	33,602
45045 PAT HOLLOWAY, TIMOTHY E. LT. GOV.: FREEMAN, MARK D.	BOX 58M STAR ROUTE EAST	LIGONIER	15658-0000	WESTMORELAND	33,235
SCATTERED, WRITE-IN VOTES					345

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KEY PARTY NAME	MAILING ADDRESS	CITY	ZIP	COUNTY	VOTES
(CONTINUED)------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 14 ----------(CONTINUED)					
45002 WKL SCHERRER, PAUL	7684 RACE ST	PITTSBURGH	15208-0000	ALLEGHENY	1,819
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 15 ----------					
40810 DEM MCHALE, PAUL	523 8TH AVE	BETHLEHEM	18018-0000	LEHIGH	72,073
40672 REP YEAGER, JIM	4737 MILL RD	SCHNECKSVILLE	18078-0000	LEHIGH	71,602
45051 PAT MAZZIOTTI, VICTOR	1414 LINDEN ST	ALLENTOWN	18102-0000	LEHIGH	7,227
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 16 ----------					
40266 REP WALKER, ROBERT S.	6965 PARKRIDGE DR	EAST PETERSBURG	17520-0000	LANCASTER	109,759
40938 DEM CHERTOK, BILL	51 S. 11TH AVE	COATESVILLE	19320-3549	CHESTER	47,680
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 17 ----------					
40621 REP GEKAS, GEORGE W.	732 S. 25TH ST	HARRISBURG	17111-0000	DAUPHIN	133,788
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 18 ----------					
40534 DEM DOYLE, MIKE	2227 HAMPTON ST	PITTSBURGH	15218-0000	ALLEGHENY	101,784
40632 REP MCCARTY, JOHN	137 ROBIN ST	NORTH VERSAILLES	15137-1946	ALLEGHENY	83,881
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 19 ----------					
40427 REP GOODLING, BILL	PO BOX 94	JACOBUS	17407-0000	YORK	124,496
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 20 ----------					
40259 DEM MASCARA, FRANK R.	831 LINCOLN AVE	CHARLEROI	15022-0000	WASHINGTON	95,251
40783 REP MCCORMICK, MIKE	PO BOX 1284	MCMURRAY	15317-0000	WASHINGTON	84,156
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 21 ----------					
41000 REP ENGLISH, PHIL	530 W. 6TH ST	ERIE	16507-0000	ERIE	89,439
40418 DEM LEAVENS, BILL	PO BOX 400	SHARON	16146-0000	MERCER	84,796
45006 IND DREW, ARTHUR E.	351 A. BONER RD.	FREDONIA	16124-0000	MERCER	6,588

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KEY PARTY NAME	MAILING ADDRESS	CITY	ZIP	COUNTY	VOTES
(CONTINUED)------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 8 ----------(CONTINUED)					
45015 LIB RUSSELL, JAY	725 NEW ROAD	NORTHAMPTON	18966-0000	BUCKS	7,925
45042 CFC CASH, ROBERT J.	1149 DICKINSON DRIVE	YARDLEY	19067-0000	BUCKS	4,191
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 9 ----------					
40446 D/R SHUSTER, BUD	BOX 8	EVERETT	15537-0000	BEDFORD	146,688
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 10 ----------					
40579 REP MCDADE, JOSEPH M.	307 CLARK AVE	CLARKS SUMMIT	18411-0000	LACKAWANNA	106,992
41275 DEM SCHREFFLER, DANIEL J.	1811 RED BARN VILLAGE #1	CLARKS SUMMIT	18411-9618	LACKAWANNA	50,635
45013 LIB SMITH, ALBERT A.	34 BRUSH DR	EAST STROUDSBURG	18301-0000	MONROE	5,196
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 11 ----------					
40404 DEM KANJORSKI, PAUL E.	183 S. HANOVER ST	NANTICOKE	18634-2218	LUZERNE	101,966
41305 REP PODOLAK, J. ANDREW	132 PINE HOLLOW DR	LEHIGHTON	18235-0000	CARBON	51,295
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 12 ----------					
40142 DEM MURTHA, JOHN P.	109 COLGATE AVE	JOHNSTOWN	15905-0000	CAMBRIA	117,825
41383 REP CHOBY, BILL	1905 BATES DR	JOHNSTOWN	15905-0000	CAMBRIA	53,147
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 13 ----------					
40949 REP FOX, JON D.	312 GLEN LN	ELKINS PARK	19117-0000	MONTGOMERY	96,254
40754 DEM MARGOLIES-MEZVINSKY, MARJORIE	PO BOX 157	NARBERTH	19072-0000	MONTGOMERY	88,873
45014 LIB HUSTEAD, LEE D.	2909 TOLL GATE DRIVE	EAST NORRITON	19401-0000	MONTGOMERY	7,183
45007 CWS SZABO, FRANK W.	614 JACKSON AVE	GLENSIDE	19038-0000	MONTGOMERY	3,278
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 14 ----------					
40962 DEM COYNE, WILLIAM J.	307 HALKET ST	PITTSBURGH	15213-0000	ALLEGHENY	105,310
41360 REP CLARK, JOHN ROBERT	1005 N. SHERIDAN AVE	PITTSBURGH	15206-1718	ALLEGHENY	53,221
45050 PAT STEWART, EDWARD L.	104 HAWTHORNE AVE	CRAFTON	15205-4522	ALLEGHENY	3,826

(CONTINUED)

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

No. 2002-17b

OFFICE OF THE SECRETARY OF THE COMMONWEALTH

Harrisburg, **February 14, 2002**

PENNSYLVANIA, SS:

I, C. Michael Weaver, Acting Secretary of the Commonwealth of Pennsylvania, DO HEREBY CERTIFY, That the attached are true and correct copies of the Official Election Results for the year 1992 for the offices of President, United States Senator, Attorney General, Auditor General, State Treasurer, and United States Congress, as the same appears of record and remains on file in the Bureau of Commissions, Elections and Legislation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of my Office to be affixed, the day and year above written.

C. Michael Weaver

Acting Secretary of the Commonwealth

DEFENDANT'S EXHIBIT 64

PENNSYLVANIA
DEPARTMENT OF STATE
09:14

BUREAU OF ELECTIONS
OFFICIAL ELECTIONS RESULTS
GENERAL ELECTION OF NOVEMBER 03, 1992
PRESIDENT OF THE UNITED STATES

COUNTY	CLINTON BILL DEMOCRATIC	BUSH GEORGE REPUBLICAN	MARROU ANDRE LIBERTARIAN	FULANI LENORA B NEW ALLIANCE	PEROT HENRY ROSS PENNSYLVANIANS
STATE TOTALS	2,239,164	1,791,841	21,477	4,681	902,847
ADAMS	9,576	16,522	145	15	1,970
ALLEGHENY	324,004	183,055	3,150	529	67,315
ARMSTRONG	12,273	18,522	133	17	2,956
BEAVER	42,807	45,845	1,018	30	9,154
BEDFORD	8,037	16,216	54	6	1,721
BERKS	76,853	81,351	676	96	15,663
BLAIR	30,030	36,427	154	22	5,452
BRADFORD	9,965	16,264	96	13	2,294
BUCKS	90,902	107,578	1,027	119	19,511
BUTLER	23,336	39,796	135	39	5,031
CAMBRIA	44,826	36,176	176	39	6,477
CAMERON	1,022	1,763	7	1	243
CARBON	11,177	12,473	56	10	2,002
CENTRE	21,645	26,002	112	44	3,943
CHESTER	90,506	107,477	1,056	84	15,553
CLARION	5,347	8,112	36	12	1,141
CLEARFIELD	12,263	16,953	66	10	2,532
CLINTON	8,013	9,571	56	7	1,412
COLUMBIA	12,695	15,447	56	12	2,447
CRAWFORD	19,900	22,112	145	18	4,279
CUMBERLAND	39,693	60,287	408	44	6,802
DAUPHIN	66,210	80,820	1,019	96	12,283
DELAWARE	102,216	127,279	1,191	117	19,553
ELK	6,577	8,220	51	7	1,268
ERIE	50,381	56,267	266	36	9,119
FAYETTE	30,930	39,983	117	17	5,452
FOREST	1,498	2,087	5	1	295
FRANKLIN	15,577	20,801	93	17	3,222
FULTON	2,298	3,550	9	1	505
GREENE	8,598	11,262	49	7	1,805
HUNTINGDON	6,153	9,299	40	6	1,273
INDIANA	15,194	19,761	94	15	3,946
JEFFERSON	6,601	9,241	41	5	1,441
JUNIATA	4,452	7,004	27	4	1,005
LACKAWANNA	69,255	71,322	1,153	65	8,805
LANCASTER	90,950	126,232	1,512	96	16,917
LAWRENCE	20,850	24,447	232	39	4,007
LEBANON	12,950	20,285	155	22	2,958
LEHIGH	70,921	76,512	1,056	96	13,807
LUZERNE	96,923	95,956	1,122	96	15,473
LYCOMING	15,131	20,965	132	22	3,205
MCKEAN	8,131	10,001	56	7	1,473
MERCER	23,964	29,557	201	29	4,112
MIFFLIN	4,946	6,706	27	4	1,006
MONROE	13,466	15,557	125	15	3,447
MONTGOMERY	136,722	156,429	2,270	201	19,779
MONTOUR	3,150	4,057	15	2	612
NORTHAMPTON	62,103	71,871	1,167	150	12,742
NORTHUMBERLAND	12,814	17,326	116	15	2,953
PERRY	4,806	7,553	29	4	1,112
PHILADELPHIA	434,904	133,326	2,411	1,954	29,947
PIKE	4,562	6,004	29	4	1,045
POTTER	2,092	3,557	9	1	505
SCHUYLKILL	23,476	29,957	201	29	4,452
SNYDER	3,452	5,004	27	4	1,005
SOMERSET	12,493	17,700	116	15	3,154
SULLIVAN	1,030	1,956	5	1	302
SUSQUEHANNA	5,368	8,004	27	4	1,005
TIOGA	5,029	8,004	27	4	1,005
UNION	6,023	8,004	27	4	1,005
VENANGO	9,172	12,004	56	7	1,805
WARREN	6,817	9,004	40	6	1,273
WASHINGTON	43,817	56,267	266	36	9,119
WAYNE	6,156	8,004	27	4	1,005
WESTMORELAND	49,113	60,287	408	44	6,802
WYOMING	4,946	7,004	27	4	1,005
YORK	49,113	60,287	408	44	6,802

REPORT ELC566
DATE 12/14/1992
PAGE NO. 1

KEY	PARTY	NAME	MAILING ADDRESS	CITY	ZIP	COUNTY	VOTES
OFFICE - REPRESENTATIVE IN CONGRESS — DISTRICT 1							
21289	DEM	FOGLIETTA, THOMAS M.	PO BOX 40078	PHILADELPHIA	19106-0000	PHILADELPHIA	150,172
21107	REP	SNYDER, CRAIG	P.O. BOX 1944	PHILADELPHIA	19105-0000	PHILADELPHIA	35,419
OFFICE - REPRESENTATIVE IN CONGRESS — DISTRICT 2							
21206	DEM	BLACKWELL, LUCIEN E.	235 S MELVILLE ST	PHILADELPHIA	19139-0000	PHILADELPHIA	164,355
21109	REP	HOLLIN, LARRY	2036 ARCH ST.	PHILADELPHIA	19103-0000	PHILADELPHIA	47,906
25035	SOC	WYATT, MARK	262 S. 46TH ST.	PHILADELPHIA	19134-0000	PHILADELPHIA	1,666
OFFICE - REPRESENTATIVE IN CONGRESS — DISTRICT 3							
21093	DEM	BORSKI, ROBERT A.	P O BOX 26846	PHILADELPHIA	19134-0000	PHILADELPHIA	130,828
21228	REP	DOUGHERTY, CHARLES F.	2475 GRANT AVE	PHILADELPHIA	19114-0000	PHILADELPHIA	86,787
25012	IND	HUGHES, JOHN J.	10904 KIPLING LANE	PHILADELPHIA	19100-0000	PHILADELPHIA	4,356
OFFICE - REPRESENTATIVE IN CONGRESS — DISTRICT 4							
21181	DEM	KLINK, RON	226 CONNOR DR	JEANNETTE	15644-0000	WESTMORELAND	186,684
21365	REP	JOHNSTON, GORDON R.	1709 10TH AVE.	BEAVER	15009-0000	BEAVER	48,484
25034	NOA	LEY, DREW	BOX 314 GEORGE ST.	VALENCIA	16059-0000	BUTLER	2,754
OFFICE - REPRESENTATIVE IN CONGRESS — DISTRICT 5							
21103	D/R	CLINGER, BILL	P O BOX 631	WARREN	16365-0000	WARREN	188,911
OFFICE - REPRESENTATIVE IN CONGRESS — DISTRICT 6							
21215	DEM	HOLDEN, TIM	31 PEARL ST.	ST. CLAIR	17970-0000	SCHUYLKILL	108,312
21218	REP	JONES, JOHN E.	PO BOX 149	POTTSVILLE	17901-0000	SCHUYLKILL	99,694
OFFICE - REPRESENTATIVE IN CONGRESS — DISTRICT 7							
21052	REP	WELDON, CURT	P O BOX 1990	MEDIA	19063-0000	DELAWARE	180,648
21205	DEM	DALY, FRANK	207 WEST ST.	MEDIA	19063-0000	DELAWARE	91,623
25047	NAT	HICKMAN, WILLIAM ALAN	7116 PINE 3300 DARBY RD	HAVERFORD	19041-0000	DELAWARE	1,627

COMMONWEALTH OF PENNSYLVANIA
GENERAL ELECTION
NOVEMBER 3, 1992

UNITED STATES SENATOR

COUNTY NAME	DEMOCRATIC Lynne YEAKEL	REPUBLICAN Arlen SPECTER	LIBERTARIAN John F. PERRY
ADAMS	12,141	14,925	1,991
ALLEGHENY	277,191	293,156	23,515
ARMSTRONG	12,206	13,979	1,916
BEAVER	43,716	32,418	5,434
BEDFORD	6,848	10,251	1,538
BERKS	56,993	64,062	6,704
BLAIR	16,960	24,337	3,417
BRADFORD	8,951	11,667	1,581
BUCKS	109,859	121,763	8,428
BUTLER	24,901	30,929	4,725
CAMBRIA	31,589	30,988	3,662
CAMERON	1,126	1,290	194
CARBON	10,571	9,500	634
CENTRE	23,863	23,626	3,106
CHESTER	70,948	86,581	9,592
CLARION	6,431	7,895	1,257
CLEARFIELD	14,248	13,756	2,605
CLINTON	6,025	5,151	1,102
COLUMBIA	10,814	11,512	1,232
CRAWFORD	13,972	16,580	2,404
CUMBERLAND	30,245	48,377	3,135
DAUPHIN	37,178	54,399	5,433
DELAWARE	111,242	136,228	8,759
ELK	6,607	6,135	1,008
ERIE	54,095	51,555	6,824
FAYETTE	27,261	21,812	2,366
FOREST	944	1,101	102
FRANKLIN	15,773	23,665	3,673
FULTON	1,888	2,786	263
GREENE	8,248	5,996	634
HUNTINGDON	5,990	8,181	1,261
INDIANA	14,998	15,976	2,037
JEFFERSON	7,107	8,923	1,616
JUNIATA	3,120	4,663	533
LACKAWANNA	45,349	44,009	2,831
LANCASTER	49,815	87,828	14,846
LAURENCE	21,718	16,707	2,132
LEBANON	14,708	24,527	2,337
LEHIGH	53,125	53,763	3,759
LUZERNE	58,125	59,642	3,281
LYCOMING	17,285	21,986	2,718
MC KEAN	6,455	7,768	744
MERCER	24,113	19,749	1,855
MIFFLIN	6,077	7,280	765
MONROE	16,792	17,580	1,355
MONTGOMERY	128,961	168,323	12,139
MONTOUR	2,888	3,320	398
NORTHAMPTON	48,641	41,455	3,162
NORTHUMBERLAND	15,476	17,076	1,761
PERRY	4,747	9,044	1,387
PHILADELPHIA	341,993	240,440	9,532
PIKE	5,556	6,834	370
POTTER	2,426	3,734	645
SCHUYLKILL	27,188	32,493	2,720
SNYDER	4,101	7,248	1,073
SOMERSET	13,335	16,669	2,415
SULLIVAN	1,334	1,585	163
SUSQUEHANNA	6,914	8,396	1,102
TIOGA	5,831	8,853	1,205
UNION	4,631	6,653	870
VENANGO	9,184	10,731	1,511
WARREN	8,211	8,671	766
WASHINGTON	42,842	36,739	3,876
WAYNE	6,437	8,806	785
WESTMORELAND	69,777	72,024	6,201
WYOMING	4,154	5,805	763
YORK	52,828	68,424	7,171
PENNSYLVANIA	2,224,966	2,358,125	219,319

KEY	PARTY	NAME	MAILING ADDRESS	CITY	ZIP	COUNTY	VOTES
(CONTINUED)------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 15 ----------(CONTINUED)							
21117	REP	RITTER, DON	P.O. BOX 20144	LEHIGH VALLEY	18002-0000	LEHIGH	99,520
25039	NAT	NAU, EUGENE A.	226 E.NORTH ST. (REAR)	BETHLEHEM	18018-0000	NORTHAMPTON	2,385
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 16 ----------							
21059	REP	WALKER, ROBERT S.	6065 PARKRIDGE DRIVE	EAST PETERSBURG	17520-0000	LANCASTER	137,823
21210	DEM	PETERS, ROBERT	265 NORTHFIELD DR	EAST PETERSBURG	17520-0000	LANCASTER	74,741
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 17 ----------							
21033	REP	GEKAS, GEORGE W.	732 S. 25TH ST.	HARRISBURG	17111-0000	DAUPHIN	150,158
21449	DEM	STURGES, BILL	165 BEACON DRIVE	HARRISBURG	17112-0000	DAUPHIN	65,881
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 18 ----------							
21169	REP	SANTORUM, RICK	127 SEMINOLE DRIVE	MT. LEBANON	15228-0000	ALLEGHENY	154,024
21039	DEM	PECORA, FRANK A.	5970 POKETA ROAD	VERONA	15147-0000	ALLEGHENY	96,655
25016	NLN	EDWARDS, DENISE WINEBRENNER	215 SOUTH AVE.	WILKINSBURG	15221-0000	ALLEGHENY	3,650
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 19 ----------							
21138	REP	GOODLING, BILL	RD 8	YORK	17403-0000	YORK	98,599
21118	DEM	KILKER, PAUL V.	3715 SPRINGETTS DRIVE	YORK	17402-0000	YORK	74,798
25003	IND	HUMBERT, THOMAS M.	964 L RANDOLPH ST.	HANOVER	17331-0000	YORK	44,190
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 20 ----------							
21016	DEM	MURPHY, AUSTIN J.	699 MAPLE DRIVE	MONONGAHELA	15063-0000	WASHINGTON	114,898
21295	REP	TOWNSEND, BILL	P.O. BOX 4233	WASHINGTON	15301-0000	WASHINGTON	111,591
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 21 ----------							
21175	REP	RIDGE, TOM	P.O. BOX 1744	ERIE	16507-0000	ERIE	150,729
21038	DEM	HARKINS, JOHN C.	2744 E. 41ST ST.	ERIE	16510-0000	ERIE	70,802

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KEY	PARTY	NAME	MAILING ADDRESS	CITY	ZIP	COUNTY	VOTES
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 8 ----------							
21129	REP	GREENWOOD, JIM	P.O. BOX 2358	DOYLESTOWN	18901-0000	BUCKS	129,593
21087	DEM	KOSTMAYER, PETER H.	85 OLD DUBLIN PIKE	DOYLESTOWN	18901-0000	BUCKS	114,895
25033	MFC	MAGERMAN, WILLIAM H.	8 MIMOSA CT.	QUAKERTOWN	18951-0000	BUCKS	5,850
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 9 ----------							
21264	D/R	SHUSTER, BUD	BOX 8	EVERETT	15537-0000	BEDFORD	182,406
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 10 ----------							
21065	D/R	MCDADE, JOSEPH M.	P O BOX 962	SCRANTON	18501-0000	LACKAWANNA	189,414
25026	LIB	SMITH, ALBERT A.	34 BRUSH DR.	EAST STROUDSBURG	18301-0000	MONROE	20,134
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 11 ----------							
21031	DEM	KANJORSKI, PAUL E.	103 S. HANOVER ST.	NANTICOKE CITY	18634-0000	LUZERNE	138,875
21230	REP	FESCINA, MICHAEL A.	332 EAST DIAMOND AVE	HAZELTON	18201-0000	LUZERNE	68,112
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 12 ----------							
21032	DEM	MURTHA, JOHN P.	109 COLGATE AVE.	JOHNSTOWN	15905-0000	CAMBRIA	166,916
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 13 ----------							
21227	DEM	MEZVINSKY, MARJORIE MARGOLIES	P O BOX 157	NARBERTH	19072-0000	MONTGOMERY	127,685
21094	REP	FOX, JON D.	312 GLEN LANE	ELKINS PARK	19117-0000	MONTGOMERY	126,312
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 14 ----------							
21139	DEM	COYNE, WILLIAM J.	307 HALKET ST.	PITTSBURGH	15213-0000	ALLEGHENY	165,633
21288	REP	KING, BYRON W.	1111 FRICK BUILDING	PITTSBURGH	15219-6101	ALLEGHENY	61,311
25006	SOC	KUNIANSKY, JOANNE S.	112 DEWITT STREET	PITTSBURGH	15211-0000	ALLEGHENY	1,300
25011	WKL	SCHERRER, PAUL	7604 RACE STREET	PITTSBURGH	15208-0000	ALLEGHENY	794
---------- OFFICE - REPRESENTATIVE IN CONGRESS ---------- DISTRICT 15 ----------							
21239	DEM	MCHALE, PAUL	523 EIGHTH AVE.	BETHLEHEM	18018-0000	LEHIGH	111,419

(CONTINUED)

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PENNSYLVANIA
DEPARTMENT OF STATE
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BUREAU OF ELECTIONS
OFFICIAL ELECTIONS RESULTS
GENERAL ELECTION OF NOVEMBER 03, 1992
ATTORNEY GENERAL

REPORT ELC506
DATE 12/07/1992
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COUNTY	KOHN JOE DEMOCRATIC	PREATE ERNIE REPUBLICAN	EWBANK JOHN R. LIBERTARIAN
ADAMS	11,977	15,434	935
ALLEGHENY	318,244	236,865	10,321
ARMSTRONG	13,909	13,240	647
BEAVER	48,114	30,492	2,004
BEDFORD	6,662	11,093	460
BERKS	53,900	64,722	3,727
BLAIR	17,037	25,937	1,220
BRADFORD	6,321	14,549	714
BUCKS	98,395	123,652	5,943
BUTLER	27,678	30,148	1,712
CAMBRIA	32,899	30,989	1,645
CAMERON	1,092	1,433	60
CARBON	8,533	10,502	322
CENTRE	21,443	26,208	1,679
CHESTER	64,597	93,613	5,565
CLARION	6,782	8,073	463
CLEARFIELD	14,728	14,728	799
CLINTON	5,267	6,275	262
COLUMBIA	8,502	13,980	604
CRAWFORD	12,156	18,666	815
CUMBERLAND	28,361	49,858	853
DAUPHIN	37,017	66,144	2,043
DELAWARE	101,155	137,762	4,262
ELK	6,513	6,732	350
ERIE	45,154	60,728	1,821
FAYETTE	30,862	16,849	819
FOREST	834	1,217	46
FRANKLIN	15,336	25,455	1,071
FULTON	2,014	2,589	122
GREENE	3,706	4,597	240
HUNTINGDON	5,718	9,123	323
INDIANA	13,854	15,899	846
JEFFERSON	7,602	9,277	523
JUNIATA	2,978	5,074	175
LACKAWANNA	27,813	62,892	1,485
LANCASTER	49,623	95,760	2,910
LAWRENCE	21,739	17,210	828
LEBANON	14,048	25,216	696
LEHIGH	47,914	54,253	2,333
LUZERNE	40,425	75,104	874
LYCOMING	13,560	26,118	807
MCKEAN	5,224	8,490	300
MERCER	22,143	20,421	602
MIFFLIN	5,613	7,774	207
MONROE	13,610	19,789	731
MONTGOMERY	127,952	161,444	5,707
MONTOUR	3,135	4,215	159
NORTHAMPTON	43,959	41,754	2,045
NORTHUMBERLAND	12,663	19,342	583
PERRY	5,028	9,471	467
PHILADELPHIA	388,709	166,502	7,790
PIKE	4,477	7,443	293
POTTER	2,360	4,043	207
SCHUYLKILL	24,279	35,611	1,442
SNYDER	3,254	8,578	318
SOMERSET	13,957	17,377	700
SULLIVAN	1,065	1,076	74
SUSQUEHANNA	4,778	11,105	479
TIOGA	4,814	9,237	478
UNION	3,797	7,834	218
VENANGO	8,522	11,000	726
WARREN	6,470	9,673	300
WASHINGTON	51,204	29,132	1,751
WAYNE	4,246	10,986	524
WESTMORELAND	78,843	62,030	1,504
WYOMING	2,405	8,004	218
YORK	51,543	70,430	2,045
STATE TOTALS	2,187,792	2,313,397	92,988

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PENNSYLVANIA
DEPARTMENT OF STATE
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BUREAU OF ELECTIONS
OFFICIAL ELECTIONS RESULTS
GENERAL ELECTION OF NOVEMBER 03, 1992
STATE TREASURER

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COUNTY	KNOLL CATHERINE BAKER DEMOCRATIC	HENRY LOWMAN S. REPUBLICAN	DERRINGER ROBERT E LIBERTARIAN
ADAMS	15,988	11,576	782
ALLEGHENY	411,949	129,776	9,255
ARMSTRONG	19,565	7,441	681
BEAVER	62,193	15,943	2,001
BEDFORD	10,155	7,554	424
BERKS	71,672	44,283	3,749
BLAIR	26,016	16,705	1,181
BRADFORD	10,273	10,330	699
BUCKS	118,251	94,357	7,090
BUTLER	38,744	18,882	1,667
CAMBRIA	49,911	13,744	1,482
CAMERON	1,475	1,001	72
CARBON	12,334	5,846	391
CENTRE	30,072	16,771	1,504
CHESTER	81,205	73,787	5,501
CLARION	9,763	4,982	430
CLEARFIELD	20,440	8,767	801
CLINTON	7,691	3,530	259
COLUMBIA	14,851	7,323	600
CRAWFORD	18,077	12,121	733
CUMBERLAND	37,837	37,905	879
DAUPHIN	55,956	37,692	1,962
DELAWARE	119,922	110,279	4,531
ELK	9,647	3,563	399
ERIE	73,401	20,108	1,781
FAYETTE	36,605	9,760	831
FOREST	1,387	650	49
FRANKLIN	20,706	20,174	961
FULTON	2,680	1,975	106
GREENE	11,864	2,279	300
HUNTINGDON	8,815	5,868	424
INDIANA	22,419	9,090	818
JEFFERSON	10,657	6,202	474
JUNIATA	4,514	3,471	197
LACKAWANNA	58,007	22,345	1,346
LANCASTER	56,555	83,613	2,564
LAWRENCE	28,331	10,248	878
LEBANON	19,223	18,706	671
LEHIGH	61,141	37,018	2,489
LUZERNE	68,489	33,230	1,655
LYCOMING	21,497	16,499	1,007
MCKEAN	6,452	6,910	358
MERCER	26,129	15,941	662
MIFFLIN	7,794	5,118	225
MONROE	18,070	13,986	753
MONTGOMERY	152,137	125,616	6,424
MONTOUR	3,889	2,375	136
NORTHAMPTON	51,821	30,267	2,188
NORTHUMBERLAND	18,807	11,936	667
PERRY	7,692	6,604	491
PHILADELPHIA	421,186	107,956	9,129
PIKE	5,380	6,209	288
POTTER	3,034	3,263	222
SCHUYLKILL	37,646	21,503	1,560
SNYDER	5,509	8,065	359
SOMERSET	21,042	10,157	667
SULLIVAN	1,600	1,239	75
SUSQUEHANNA	8,574	7,029	475
TIOGA	6,860	7,758	449
UNION	6,111	5,352	272
VENANGO	12,855	7,501	614
WARREN	9,330	6,314	348
WASHINGTON	63,816	15,923	1,675
WAYNE	7,173	7,072	355
WESTMORELAND	97,406	40,616	1,494
WYOMING	5,576	4,508	295
YORK	65,886	52,335	2,025
STATE TOTALS	2,832,031	1,532,527	95,835

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PENNSYLVANIA
DEPARTMENT OF STATE
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COUNTY	LEWIS CRAIG DEMOCRATIC	HAFER BARBARA REPUBLICAN	CLYMER JAMES H LIBERTARIAN	BUREAU OF ELECTIONS OFFICIAL ELECTION RESULTS GENERAL ELECTION OF NOVEMBER 3, 1992 AUDITOR GENERAL
ADAMS	27,524	27,579	1,309	
ALLEGHENY	211,160	275,229	16,695	
ARMSTRONG	21,682	34,577	2,660	
BEAVER	45,696	54,952	5,994	
BEDFORD	5,862	21,932	1,022	
BERKS	44,148	70,109	5,222	
BLAIR	14,125	28,085	2,022	
BRADFORD	9,449	14,020	1,022	
BUCKS	104,137	114,828	9,994	
BUTLER	21,685	30,942	2,009	
CAMBRIA	32,597	51,440	5,441	
CAMERON	910	1,114	114	
CARBON	9,117	9,557	575	
CENTRE	17,221	29,962	2,456	
CHESTER	54,119	90,662	6,649	
CLARION	5,410	9,159	575	
CLEARFIELD	12,355	16,115	1,475	
CLINTON	7,738	12,771	870	
COLUMBIA	10,695	12,455	1,155	
CRAWFORD	19,949	19,587	1,949	
CUMBERLAND	39,898	50,005	4,449	
DAUPHIN	49,095	64,415	5,549	
DELAWARE	99,727	135,599	7,422	
ELK	7,210	12,965	1,022	
ERIE	40,592	49,870	3,555	
FAYETTE	28,982	29,778	2,219	
FOREST	975	1,554	229	
FRANKLIN	12,725	26,855	2,187	
FULTON	1,764	2,855	229	
GREENE	8,727	9,005	1,022	
HUNTINGDON	6,727	9,668	1,022	
INDIANA	16,665	19,578	1,475	
JEFFERSON	8,827	11,672	1,022	
JUNIATA	3,441	5,072	343	
LACKAWANNA	46,972	65,005	4,455	
LANCASTER	69,557	90,005	6,649	
LAWRENCE	20,044	25,855	2,229	
LEBANON	15,557	25,998	1,949	
LEHIGH	46,665	69,005	5,222	
LUZERNE	53,506	65,998	5,222	
LYCOMING	16,835	23,765	1,949	
MCKEAN	21,063	20,515	1,715	
MERCER	29,912	30,022	2,229	
MIFFLIN	5,912	9,455	687	
MONROE	14,258	19,998	1,715	
MONTGOMERY	120,704	150,956	9,994	
MONTOUR	2,568	3,255	229	
NORTHAMPTON	40,159	56,998	4,455	
NORTHUMBERLAND	13,730	17,885	1,249	
PERRY	5,068	8,022	687	
PHILADELPHIA	375,614	166,236	10,195	
PIKE	6,443	7,022	572	
POTTER	2,961	3,022	343	
SCHUYLKILL	25,756	34,566	2,889	
SNYDER	3,511	5,566	343	
SOMERSET	13,129	17,076	1,022	
SULLIVAN	1,976	1,908	114	
SUSQUEHANNA	5,109	8,558	572	
TIOGA	5,370	7,776	572	
UNION	4,004	5,556	572	
VENANGO	9,555	12,229	1,029	
WARREN	9,202	12,001	1,029	
WASHINGTON	42,502	52,667	3,551	
WAYNE	7,122	9,316	572	
WESTMORELAND	71,177	60,362	3,429	
WYOMING	4,597	6,304	343	
YORK	45,878	73,545	4,552	
STATE TOTALS	2,068,629	2,360,915	164,405	

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DATE 12/07/1992
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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

No. 2002-18b

OFFICE OF THE SECRETARY OF THE COMMONWEALTH

Harrisburg, **February 14, 2002**

PENNSYLVANIA, SS:

I, C. Michael Weaver, Acting Secretary of the Commonwealth of Pennsylvania, DO HEREBY CERTIFY, That the attached is a true and correct copy of the Official Election Results for the Special Election in the year 1991 for the office of United States Senator, as the same appears of record and remains on file in the Bureau of Commissions, Elections and Legislation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caus. I the seal of my Office to be affixed, the day and year above written.

C. Michael Weaver

Acting Secretary of the Commonwealth

DEFENDANT'S EXHIBIT 65

UNITED STATES SENATOR — THORNBURGH, DICK (16002) — REPUBLICAN

COUNTY	VOTES	COUNTY	VOTES
ADAMS	11,110	LACKAWANNA	26,030
ALLEGHENY	167,881	LANCASTER	66,564
ARMSTRONG	9,756	LAWRENCE	11,373
BEAVER	18,673	LEBANON	18,209
BEDFORD	9,189	LEHIGH	34,489
BERKS	47,276	LUZERNE	36,708
BLAIR	18,157	LYCOMING	17,727
BRADFORD	9,602	MCKEAN	6,464
BUCKS	72,509	MERCER	13,497
BUTLER	22,409	MIFFLIN	5,844
CAMBRIA	21,061	MONROE	11,470
CAMERON	1,451	MONTGOMERY	98,069
CARBON	6,827	MONTOUR	2,508
CENTRE	17,250	NORTHAMPTON	27,744
CHESTER	54,989	NORTHUMBERLAND	13,380
CLARION	6,366	PERRY	7,395
CLEARFIELD	11,479	PHILADELPHIA	114,017
CLINTON	4,143	PIKE	4,365
COLUMBIA	8,905	POTTER	3,589
CRAWFORD	11,769	SCHUYLKILL	21,996
CUMBERLAND	35,303	SNYDER	6,426
DAUPHIN	36,798	SOMERSET	13,152
DELAWARE	89,192	SULLIVAN	1,569
ELK	5,448	SUSQUEHANNA	6,916
ERIE	36,939	TIOGA	8,073
FAYETTE	11,219	UNION	5,486
FOREST	906	VENANGO	7,562
FRANKLIN	17,559	WARREN	6,684
FULTON	2,382	WASHINGTON	21,612
GREENE	3,729	WAYNE	7,101
HUNTINGDON	7,363	WESTMORELAND	44,628
INDIANA	10,838	WYOMING	4,298
JEFFERSON	7,865	YORK	46,725
JUNIATA	3,973		

TOTAL STATEWIDE VOTES: 1,521,986

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UNITED STATES SENATOR — WOFFORD, HARRIS (16001) — DEMOCRATIC

COUNTY	VOTES	COUNTY	VOTES
ADAMS	8,745	LACKAWANNA	46,145
ALLEGHENY	257,482	LANCASTER	29,779
ARMSTRONG	13,369	LAWRENCE	19,301
BEAVER	42,400	LEBANON	10,686
BEDFORD	5,865	LEHIGH	37,071
BERKS	35,447	LUZERNE	59,991
BLAIR	14,132	LYCOMING	13,294
BRADFORD	6,433	MCKEAN	4,472
BUCKS	75,844	MERCER	20,150
BUTLER	20,054	MIFFLIN	4,616
CAMBRIA	31,442	MONROE	11,506
CAMERON	947	MONTGOMERY	104,215
CARBON	9,443	MONTOUR	2,178
CENTRE	14,380	NORTHAMPTON	32,461
CHESTER	43,393	NORTHUMBERLAND	14,306
CLARION	5,625	PERRY	3,768
CLEARFIELD	12,027	PHILADELPHIA	331,638
CLINTON	5,408	PIKE	3,486
COLUMBIA	7,509	POTTER	1,973
CRAWFORD	13,178	SCHUYLKILL	26,387
CUMBERLAND	21,101	SNYDER	2,973
DAUPHIN	30,313	SOMERSET	12,416
DELAWARE	90,613	SULLIVAN	1,233
ELK	5,534	SUSQUEHANNA	5,831
ERIE	44,251	TIOGA	4,551
FAYETTE	28,185	UNION	3,335
FOREST	807	VENANGO	7,504
FRANKLIN	10,841	WARREN	6,263
FULTON	1,566	WASHINGTON	40,415
GREENE	8,342	WAYNE	4,682
HUNTINGDON	5,080	WESTMORELAND	63,873
INDIANA	13,041	WYOMING	3,090
JEFFERSON	6,445	YORK	35,164
JUNIATA	2,765		

TOTAL STATEWIDE VOTES: 1,860,760

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

No. 2002-19b

OFFICE OF THE SECRETARY OF THE COMMONWEALTH

Harrisburg, **February 14, 2002**

PENNSYLVANIA, SS:

I, C. Michael Weaver, Acting Secretary of the Commonwealth of Pennsylvania, DO HEREBY CERTIFY, That the attached are true and correct copies of the Official Election Results for the year 2001 for the offices of Justice of the Supreme Court, Judge of the Superior Court and Judge of the Commonwealth Court, as the same appears of record and remains on file in the Bureau of Commissions, Elections and Legislation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of my Office to be affixed, the day and year above written.

C. Michael Weaver

Acting Secretary of the Commonwealth

DEFENDANT'S EXHIBIT 66

PENNSYLVANIA
DEPARTMENT OF STATE
10:19

BUREAU OF ELECTIONS
OFFICIAL ELECTIONS RESULTS
MUNICIPAL ELECTION OF NOVEMBER 06, 2001
JUSTICE OF THE SUPREME COURT

REPORT ELC506
DATE 12/19/2001
PAGE NO. 2

COUNTY	EAKIN MIKE REPUBLICAN	FORD ELLIOTT KATE DEMOCRATIC
ADAMS	9,502	4,018
ALLEGHENY	91,533	132,405
ARMSTRONG	7,759	6,647
BEAVER	15,686	20,395
BEDFORD	6,721	3,140
BERKS	28,605	22,807
BLAIR	17,003	9,098
BRADFORD	7,506	3,437
BUCKS	55,071	43,612
BUTLER	16,034	10,894
CAMBRIA	14,571	17,220
CAMERON	862	642
CARBON	4,717	5,050
CENTRE	13,215	10,041
CHESTER	39,755	23,698
CLARION	5,653	4,114
CLEARFIELD	9,041	7,043
CLINTON	3,285	2,821
COLUMBIA	6,401	4,748
CRAWFORD	8,915	5,375
CUMBERLAND	29,755	10,485
DAUPHIN	25,832	14,039
DELAWARE	59,863	35,449
ELK	3,982	4,465
ERIE	32,454	30,866
FAYETTE	7,188	11,969
FOREST	912	725
FRANKLIN	11,623	5,134
FULTON	1,440	817
GREENE	2,261	4,660
HUNTINGDON	5,607	2,489
INDIANA	9,832	7,752
JEFFERSON	7,054	4,893
JUNIATA	3,591	2,147
LACKAWANNA	21,102	26,141
LANCASTER	47,141	16,003
LAWRENCE	10,569	13,376
LEBANON	12,987	4,938
LEHIGH	23,638	21,267
LUZERNE	24,619	24,078
LYCOMING	13,422	6,635
MCKEAN	5,203	2,473
MERCER	10,459	11,871
MIFFLIN	4,562	2,223
MONROE	9,284	7,137
MONTGOMERY	68,260	55,714
MONTOUR	2,323	1,493
NORTHAMPTON	20,842	22,055
NORTHUMBERLAND	11,806	7,533
PERRY	5,958	2,040
PHILADELPHIA	32,769	133,498
PIKE	4,698	2,415
POTTER	2,299	1,097
SCHUYLKILL	21,846	16,558
SNYDER	5,683	2,078
SOMERSET	11,086	7,234
SULLIVAN	975	702
SUSQUEHANNA	6,740	3,739
TIOGA	5,102	2,455
UNION	5,005	2,392
VENANGO	5,848	3,803
WARREN	4,183	2,577
WASHINGTON	15,253	23,961
WAYNE	5,111	2,125
WESTMORELAND	32,003	33,069
WYOMING	3,602	1,633
YORK	33,753	16,654
STATE TOTALS	1,051,360	954,062

BEST AVAILABLE COPY

COUNTY	BOWES MARY JANE REPUBLICAN	KLEIN RICHARD B. REPUBLICAN	BENDER JOHN T. REPUBLICAN	WECHT DAVID DEMOCRATIC	KIRKLAND LYDIA Y. DEMOCRATIC	DOMITROVICH STEPHANIE DEMOCRATIC
ADAMS	8,592	8,865	7,509	3,317	3,895	3,443
ALLEGHENY	89,724	87,039	77,201	139,522	103,520	102,968
ARMSTRONG	7,373	7,059	5,264	7,169	5,024	4,703
BEAVER	13,646	14,253	12,764	21,384	15,751	19,786
BEDFORD	6,103	6,266	5,245	2,631	2,669	2,785
BERKS	26,352	28,443	26,193	16,984	20,746	19,654
BLAIR	15,653	16,199	13,145	7,035	7,058	8,295
BRADFORD	7,487	7,045	6,131	2,418	2,907	2,671
BUCKS	56,423	56,969	52,723	35,741	39,363	36,968
BUTLER	16,832	16,086	13,366	12,425	8,747	7,533
CAMBRIA	13,486	13,530	10,798	15,228	15,706	16,408
CAMERON	811	762	647	486	513	502
CARBON	4,428	4,437	3,868	4,358	4,624	4,719
CENTRE	13,187	12,825	11,023	7,463	8,472	8,568
CHESTER	43,015	40,216	36,734	16,877	20,786	18,713
CLARION	5,068	5,236	3,792	4,322	2,652	2,439
CLEARFIELD	8,133	8,051	6,763	5,895	5,646	6,481
CLINTON	3,079	2,989	2,358	2,230	2,515	2,448
COLUMBIA	6,208	5,969	4,616	3,552	4,100	4,059
CRAWFORD	7,923	8,000	6,966	4,139	4,351	6,188
CUMBERLAND	24,628	25,135	20,782	9,718	11,265	12,416
DAUPHIN	22,818	26,196	20,776	11,080	13,154	12,194
DELAWARE	62,866	62,228	57,637	28,848	32,279	29,981
ELK	3,889	3,777	2,676	3,397	3,307	3,442
ERIE	27,184	27,946	22,234	22,341	23,269	45,505
FAYETTE	5,800	6,544	5,112	12,517	9,456	9,190
FOREST	870	825	628	582	511	545
FRANKLIN	11,168	10,846	10,754	4,111	4,640	3,931
FULTON	2,386	2,389	2,237	656	680	606
GREENE	2,379	2,324	1,584	4,328	3,416	2,693
HUNTINGDON	4,844	5,025	3,811	1,759	1,999	2,303
INDIANA	8,609	8,813	6,989	7,692	7,293	5,442
JEFFERSON	6,375	6,516	5,206	4,385	3,362	3,737
JUNIATA	3,028	3,302	2,637	1,757	2,030	1,497
LACKAWANNA	17,658	17,162	14,506	21,795	23,567	25,038
LANCASTER	43,938	45,276	41,372	13,336	14,446	14,581
LAWRENCE	9,934	9,501	8,306	12,491	9,953	9,674
LEBANON	11,665	12,458	10,764	4,020	4,623	4,693
LEHIGH	22,998	23,607	20,460	17,676	18,265	18,581
LUZERNE	21,987	22,594	19,215	20,240	22,366	23,753
LYCOMING	12,492	12,286	11,197	4,982	5,752	5,506
MCKEAN	5,175	5,021	4,392	1,750	2,098	2,127
MERCER	11,475	9,333	10,680	10,716	8,036	11,052
MIFFLIN	4,145	4,281	3,731	1,797	2,049	1,900
MONROE	9,360	9,092	8,557	5,728	6,458	6,350
MONTGOMERY	73,165	73,052	66,621	43,148	49,076	45,399
MONTOUR	2,266	2,209	1,885	1,220	1,330	1,252
NORTHAMPTON	22,337	22,157	18,904	17,182	19,193	18,802
NORTHUMBERLAND	10,483	10,916	9,574	5,912	6,792	6,567
PERRY	5,156	5,553	4,317	1,591	1,999	1,501
PHILADELPHIA	33,321	35,022	27,179	108,480	130,888	110,135
PIKE	4,616	4,516	4,313	2,047	2,306	2,189
POTTER	2,272	2,148	1,820	806	950	814
SCHUYLKILL	21,612	19,857	17,653	12,814	14,759	15,227
SNYDER	5,091	5,339	4,375	1,586	1,800	1,574
SOMERSET	9,894	9,906	8,395	7,221	6,387	6,399
SULLIVAN	987	945	761	437	534	553
SUSQUEHANNA	6,617	6,237	5,462	2,613	2,997	3,065
TIOGA	5,129	4,815	4,170	1,617	2,106	1,771
UNION	5,074	5,164	4,431	1,943	2,371	2,204
VENANGO	5,891	5,632	4,599	3,924	3,012	3,221
WARREN	3,970	3,861	3,301	2,923	2,081	2,703
WASHINGTON	14,513	14,751	10,947	23,368	17,702	17,157
WAYNE	4,745	4,816	4,215	1,735	1,932	1,966
WESTMORELAND	27,065	30,804	26,230	36,254	27,100	26,454
WYOMING	3,419	3,344	2,807	1,210	1,342	1,400
YORK	30,456	32,283	28,747	14,010	15,448	14,956
STATE TOTALS	1,006,251	1,011,943	880,957	830,821	825,424	821,377

COUNTY	COHN RENEE REPUBLICAN	SIMPSON ROBIN REPUBLICAN	LEAVITT MARY HANNAH REPUBLICAN	DODARO JAMES J. DEMOCRATIC	LANGAN JERRY DEMOCRATIC	ARONSON IRWIN W. DEMOCRATIC
ADAMS	8,153	8,237	8,102	3,767	3,751	3,133
ALLEGHENY	78,258	78,487	83,143	129,355	107,913	101,064
ARMSTRONG	7,316	6,301	6,137	6,327	5,004	4,335
BEAVER	13,904	12,273	12,899	21,660	17,658	15,290
BEDFORD	6,003	5,710	5,590	3,031	2,648	2,151
BERKS	25,642	28,202	27,121	18,254	19,396	18,000
BLAIR	15,659	13,769	14,267	8,454	7,158	5,760
BRADFORD	6,826	6,644	6,586	2,566	3,467	2,208
BUCKS	52,852	56,022	55,458	38,129	37,315	36,888
BUTLER	16,734	14,622	14,766	10,761	9,254	7,533
CAMBRIA	13,036	11,318	12,271	18,305	15,037	13,939
CAMERON	692	658	714	595	541	408
CARBON	4,261	4,089	4,172	4,734	4,919	4,128
CENTRE	13,673	11,356	11,718	8,214	7,680	6,928
CHESTER	39,815	40,252	39,260	19,449	18,456	17,702
CLARION	4,901	4,813	4,586	3,335	2,924	2,343
CLEARFIELD	7,762	7,038	7,305	6,722	5,905	5,072
CLINTON	2,738	2,731	2,866	2,363	2,568	2,113
COLUMBIA	5,555	5,191	5,269	3,902	4,464	3,202
CRAWFORD	7,407	7,520	7,753	4,863	4,576	3,981
CUMBERLAND	22,056	21,003	25,959	10,994	9,483	13,619
DAUPHIN	22,011	21,933	23,545	13,785	11,770	11,895
DELAWARE	57,868	59,164	58,832	30,806	30,171	29,866
ELK	3,317	2,978	3,278	4,129	3,523	2,819
ERIE	25,296	25,922	28,338	26,911	25,770	22,903
FAYETTE	5,545	5,525	5,584	11,318	9,756	8,852
FOREST	833	770	749	539	505	418
FRANKLIN	10,629	10,542	10,366	4,652	4,799	3,839
FULTON	1,361	1,316	1,273	645	661	568
GREENE	2,131	1,919	1,972	4,052	3,367	2,661
HUNTINGDON	4,784	4,530	4,371	2,165	2,002	1,741
INDIANA	8,141	7,892	7,800	8,248	6,513	5,297
JEFFERSON	6,416	6,026	5,851	4,175	3,447	2,930
JUNIATA	2,935	2,910	2,821	1,915	1,884	1,587
LACKAWANNA	14,200	13,559	15,042	24,628	33,670	20,720
LANCASTER	42,104	42,605	42,595	15,607	15,253	13,797
LAWRENCE	9,328	8,985	9,008	11,701	10,240	8,157
LEBANON	11,441	11,171	12,011	4,383	4,367	4,593
LEHIGH	25,075	22,599	21,354	18,281	17,921	16,236
LUZERNE	20,181	19,700	20,879	22,188	28,737	19,141
LYCOMING	11,246	11,298	11,551	5,694	6,532	4,874
MCKEAN	4,779	4,760	4,899	2,044	1,973	1,716
MERCER	11,465	10,313	10,222	12,406	9,039	8,810
MIFFLIN	3,864	3,944	4,071	2,167	1,912	1,713
MONROE	8,709	8,813	8,998	6,064	6,892	5,703
MONTGOMERY	69,697	70,947	71,405	45,964	44,529	46,449
MONTOUR	2,056	1,980	2,012	1,226	1,423	1,028
NORTHAMPTON	21,226	24,317	19,508	18,385	17,726	16,167
NORTHUMBERLAND	9,799	9,830	10,196	7,012	7,085	5,777
PERRY	4,973	4,657	4,674	2,027	1,753	1,468
PHILADELPHIA	30,077	30,793	31,415	112,407	110,256	114,397
PIKE	4,341	4,436	4,390	2,177	2,379	2,043
POTTER	2,126	2,065	2,043	832	922	727
SCHUYLKILL	19,819	18,477	18,827	14,207	16,715	12,398
SNYDER	4,689	4,650	4,633	2,019	1,962	1,425
SOMERSET	9,608	8,976	9,357	7,811	6,334	5,479
SULLIVAN	843	907	877	490	659	408
SUSQUEHANNA	6,042	5,871	5,781	2,849	3,719	2,289
TIOGA	4,901	4,732	4,573	1,684	1,922	1,538
UNION	4,840	4,700	4,627	2,340	2,306	1,860
VENANGO	5,782	5,421	5,456	3,488	3,024	2,473
WARREN	3,699	3,709	3,833	2,079	2,169	1,814
WASHINGTON	13,888	12,739	12,625	21,887	17,685	16,313
WAYNE	4,459	4,511	4,499	1,892	2,430	1,698
WESTMORELAND	26,206	26,500	25,827	34,283	29,260	26,289
WYOMING	3,115	3,018	3,000	1,297	1,846	1,057
YORK	29,833	30,298	30,835	15,264	14,984	14,006
STATE TOTALS	948,921	938,944	951,745	865,903	821,909	747,736

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

No. 2002-20b

OFFICE OF THE SECRETARY OF THE COMMONWEALTH

Harrisburg, **February 14, 2002**

PENNSYLVANIA, SS:

I, C. Michael Weaver, Acting Secretary of the Commonwealth of Pennsylvania, DO HEREBY CERTIFY, That the attached is a true and correct copy of the Official Election Results for the year 1999 for the office of Judge of the Superior Court, as the same appears of record and remains on file in the Bureau of Commissions, Elections and Legislation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of my Office to be affixed, the day and year above written.

C. Michael Weaver

Acting Secretary of the Commonwealth

DEFENDANT'S EXHIBIT 67

PENNSYLVANIA
DEPARTMENT OF STATE
14:23

BUREAU OF ELECTIONS
OFFICIAL ELECTIONS RESULTS
MUNICIPAL ELECTION OF NOVEMBER 02, 1999
JUDGE OF THE SUPERIOR COURT

REPORT ELC50
DATE 12/20/199
PAGE NO.

COUNTY	LALLY-GREEN MAUREEN REPUBLICAN	KLEIN RICHARD B. REPUBLICAN	TODD DEBRA DEMOCRATIC	SCHILLER BERLE DEMOCRATIC
ADAMS	8,782	8,383	5,236	3,507
ALLEGHENY	135,379	94,724	177,827	126,543
ARMSTRONG	6,934	6,170	8,100	5,269
BEAVER	13,588	12,798	26,764	17,136
BEDFORD	6,797	6,686	4,011	2,758
BERKS	28,134	27,597	23,091	20,726
BLAIR	13,386	12,028	6,202	3,800
BRADFORD	8,481	7,247	4,131	2,908
BUCKS	53,765	52,536	34,558	32,659
BUTLER	18,029	13,841	14,583	9,941
CAMBRIA	14,379	12,527	17,755	13,213
CAMERON	899	862	673	468
CARBON	4,330	4,051	5,065	4,514
CENTRE	13,914	12,480	9,683	6,646
CHESTER	38,594	35,405	20,604	17,172
CLARION	4,833	4,573	4,288	2,617
CLEARFIELD	8,673	7,306	7,271	5,193
CLINTON	3,277	2,960	3,061	2,471
COLUMBIA	6,290	5,221	4,751	3,967
CRAWFORD	9,630	7,001	5,367	4,087
CUMBERLAND	19,939	20,219	9,760	7,393
DAUPHIN	23,023	24,973	13,128	10,919
DELAWARE	66,213	64,273	32,220	32,276
ELK	3,633	2,772	3,773	2,432
ERIE	24,558	22,070	18,324	18,760
FAYETTE	7,886	7,153	15,388	11,400
FOREST	815	624	583	404
FRANKLIN	10,494	10,274	4,842	3,339
FULTON	1,473	1,420	893	621
GREENE	2,465	2,028	4,334	3,795
HUNTINGDON	5,238	4,929	2,754	1,743
INDIANA	8,135	7,586	8,627	5,933
JEFFERSON	5,516	5,093	4,496	2,758
JUNIATA	3,093	3,165	2,189	1,472
LACKAWANNA	19,603	14,708	23,290	23,343
LANCASTER	40,187	38,005	14,351	13,626
LAWRENCE	9,281	7,409	13,859	8,021
LEBANON	11,946	12,705	5,119	4,164
LEHIGH	21,221	20,888	16,860	15,882
LUZERNE	25,256	19,461	22,927	23,667
LYCOMING	12,261	11,304	6,238	5,394
MCKEAN	4,697	4,495	2,383	1,553
MERCER	13,029	7,860	8,904	6,170
MIFFLIN	4,259	3,561	1,953	1,629
MONROE	9,435	8,528	6,306	5,995
MONTGOMERY	67,953	70,713	42,641	46,041
MONTOUR	1,989	1,811	1,319	1,097
NORTHAMPTON	15,296	15,622	16,406	15,251
NORTHUMBERLAND	9,964	9,428	8,112	7,333
PERRY	4,205	4,214	1,831	1,213
PHILADELPHIA	86,329	91,300	224,699	221,020
PIKE	4,494	4,298	2,906	2,689
POTTER	2,612	2,539	1,509	983
SCHUYLKILL	19,299	16,384	15,433	12,514
SNYDER	4,176	4,201	1,562	1,241
SOMERSET	10,512	9,853	8,854	6,048
SULLIVAN	1,108	979	721	596
SUSQUEHANNA	6,045	5,145	3,222	2,566
TIOGA	5,428	4,759	2,645	1,706
UNION	4,191	3,884	1,938	1,976
VENANGO	5,860	4,719	4,076	2,969
WARREN	5,169	4,682	3,061	2,449
WASHINGTON	16,327	13,397	27,154	20,246
WAYNE	5,332	4,710	2,446	2,147
WESTMORELAND	27,394	25,900	37,298	30,010
WYOMING	4,056	3,471	1,799	1,463
YORK	27,431	26,733	16,929	14,793
STATE TOTALS	1,086,920	988,641	1,053,083	894,635

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

No. 2002-21b

OFFICE OF THE SECRETARY OF THE COMMONWEALTH

Harrisburg, **February 14, 2002**

PENNSYLVANIA, SS:

I, C. Michael Weaver, Acting Secretary of the Commonwealth of Pennsylvania, DO HEREBY CERTIFY, That the attached are true and correct copies of the Official Election Results for the year 1997 for the offices of Justice of the Supreme Court, Judge of the Superior Court and Judge of the Commonwealth Court, as the same appears of record and remains on file in the Bureau of Commissions, Elections and Legislation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of my Office to be affixed, the day and year above written.

C. Michael Weaver

Acting Secretary of the Commonwealth

PENNSYLVANIA
DEPARTMENT OF STATE
12:32

BUREAU OF ELECTIONS
OFFICIAL ELECTIONS RESULTS
MUNICIPAL ELECTION OF NOVEMBER 04, 1997
JUSTICE OF THE SUPREME COURT

DATE 12/18/1997
PAGE NO. 1

COUNTY	SAYLOR THOMAS G. REPUBLICAN	DEL SOLE JOSEPH A. DEMOCRATIC
ADAMS	12,037	4,404
ALLEGHENY	144,682	213,215
ARMSTRONG	11,653	10,025
BEAVER	22,568	32,232
BEDFORD	8,398	4,155
BERKS	31,248	19,768
BLAIR	17,158	7,710
BRADFORD	8,889	3,222
BUCKS	53,847	38,629
BUTLER	26,258	18,065
CAMBRIA	17,498	19,652
CAMERON	992	683
CARBON	4,702	5,190
CENTRE	16,914	8,156
CHESTER	40,496	20,166
CLARION	7,094	4,383
CLEARFIELD	10,324	7,545
CLINTON	3,745	3,178
COLUMBIA	6,953	5,335
CRAWFORD	10,382	6,280
CUMBERLAND	30,203	9,785
DAUPHIN	29,819	12,744
DELAWARE	68,422	37,162
ELK	4,122	3,903
ERIE	31,796	30,695
FAYETTE	10,790	16,675
FOREST	913	560
FRANKLIN	14,742	5,145
FULTON	1,956	906
GREENE	3,426	6,970
HUNTINGDON	6,471	2,775
INDIANA	12,634	9,636
JEFFERSON	6,898	3,903
JUNIATA	3,806	1,615
LACKAWANNA	18,092	28,160
LANCASTER	45,588	13,371
LAWRENCE	12,141	14,892
LEBANON	14,380	4,896
LEHIGH	26,122	21,460
LUZERNE	25,631	28,888
LYCOMING	13,029	6,109
MCKEAN	4,778	2,274
MERCER	12,047	9,428
MIFFLIN	4,772	1,930
MONROE	9,795	7,139
MONTGOMERY	67,920	45,701
MONTOUR	2,304	1,524
NORTHAMPTON	20,625	21,866
NORTHUMBERLAND	11,228	7,634
PERRY	6,306	1,736
PHILADELPHIA	41,836	127,947
PIKE	4,630	2,444
POTTER	2,878	1,300
SCHUYLKILL	22,845	18,868
SNYDER	5,312	1,480
SOMERSET	14,309	8,508
SULLIVAN	1,212	717
SUSQUEHANNA	6,181	3,127
TIOGA	6,324	2,322
UNION	4,558	1,935
VENANGO	8,134	5,266
WARREN	6,258	3,623
WASHINGTON	22,087	37,869
WAYNE	5,942	2,487
WESTMORELAND	45,561	50,353
WYOMING	4,776	2,252
YORK	40,043	17,589

BUREAU OF ELECTIONS
OFFICIAL ELECTIONS RESULTS
MUNICIPAL ELECTION OF NOVEMBER 04, 1997
JUDGE OF THE SUPERIOR COURT

COUNTY	JOYCE MIKE REPUBLICAN	MELVIN JOAN ORIE REPUBLICAN	STEVENS CORRY REPUBLICAN	MACELREE JIM REPUBLICAN	TODD DEBRA DEMOCRATIC	MUSMANNO JOHN L. DEMOCRATIC	STRASSBURGER GENE DEMOCRATIC
ADAMS	9,969	9,400	8,583	8,165	6,705	4,577	4,443
ALLEGHENY	140,110	167,298	122,649	113,913	174,611	215,969	179,879
ARMSTRONG	9,696	10,229	8,402	6,898	9,673	9,446	7,756
BEAVER	20,272	21,586	17,950	14,467	32,444	31,779	25,757
BEDFORD	6,949	6,455	6,323	5,852	4,510	3,727	3,454
BERKS	24,345	26,513	25,647	22,978	21,521	19,230	17,843
BLAIR	14,892	13,693	12,715	11,232	8,529	7,836	6,378
BRADFORD	7,060	6,999	7,011	6,052	4,319	2,724	2,613
BUCKS	50,987	55,643	53,312	52,636	37,430	36,832	34,462
BUTLER	24,194	25,960	21,511	17,518	18,335	18,776	14,374
CAMBRIA	14,792	15,346	13,413	10,074	19,412	19,600	15,165
CAMERON	887	832	762	642	743	529	456
CARBON	4,180	4,222	5,036	3,890	4,940	4,963	4,539
CENTRE	13,079	12,940	11,240	9,848	9,847	8,009	6,854
CHESTER	37,599	38,386	35,232	41,351	20,944	17,614	15,862
CLARION	5,448	5,522	4,563	4,470	4,556	3,773	3,061
CLEARFIELD	8,216	7,932	7,611	6,790	7,689	6,805	5,771
CLINTON	2,908	2,842	2,871	2,677	3,071	2,923	2,495
COLUMBIA	5,619	5,722	6,513	4,658	5,332	4,284	3,918
CRAWFORD	10,483	8,917	8,681	8,387	6,255	5,830	5,087
CUMBERLAND	25,543	24,343	22,055	20,870	13,722	11,781	9,938
DAUPHIN	24,325	24,242	23,414	22,185	16,537	15,040	12,457
DELAWARE	66,496	68,320	67,198	66,951	35,909	35,341	33,098
ELK	3,412	3,271	2,799	2,574	3,928	3,336	2,766
ERIE	46,730	25,547	25,091	22,141	24,659	27,826	18,103
FAYETTE	7,750	9,087	7,797	7,330	14,451	15,256	12,005
FOREST	797	725	563	528	537	486	361
FRANKLIN	12,571	12,246	11,899	9,948	7,444	5,005	5,047
FULTON	1,710	1,524	1,516	1,420	1,037	803	825
GREENE	2,859	3,075	2,654	2,372	5,824	5,783	4,937
HUNTINGDON	4,946	4,556	4,547	4,226	3,023	2,763	2,861
INDIANA	10,057	10,924	9,590	8,468	10,487	9,579	7,929
JEFFERSON	5,408	5,339	4,903	4,388	4,024	3,650	2,836
JUNIATA	3,027	2,706	2,690	2,462	2,136	1,474	1,538
LACKAWANNA	17,867	15,922	22,727	13,886	22,761	26,358	20,705
LANCASTER	41,716	41,806	40,821	39,023	16,340	14,308	13,070
LAWRENCE	9,325	10,500	8,815	7,047	14,921	12,652	9,763
LEBANON	12,072	12,131	11,646	11,527	6,392	5,653	5,031
LEHIGH	22,681	25,309	23,987	21,950	20,831	21,069	19,320
LUZERNE	24,314	23,027	48,998	20,968	27,807	26,419	21,610
LYCOMING	10,675	1,085	11,114	10,322	6,817	5,814	5,339
MCKEAN	4,067	4,255	4,003	4,034	2,470	1,943	1,911
MERCER	10,501	10,661	10,347	8,982	9,727	8,671	8,029
MIFFLIN	3,778	3,593	3,536	3,487	2,304	2,038	1,945
MONROE	9,485	9,308	9,382	9,125	7,380	6,884	6,657
MONTGOMERY	62,730	67,449	66,325	64,119	44,591	42,831	40,324
MONTOUR	1,948	1,929	1,924	1,574	1,572	1,250	1,095
NORTHAMPTON	17,763	19,281	19,037	17,754	19,991	20,902	18,595
NORTHUMBERLAND	9,352	9,483	9,495	8,539	7,778	7,439	6,186
PERRY	4,969	4,479	4,238	4,036	2,453	1,826	1,700
PHILADELPHIA	35,167	40,875	40,353	37,729	116,990	119,912	112,314
PIKE	4,260	4,229	4,290	4,167	2,525	2,353	2,249
POTTER	2,352	2,300	2,258	2,070	1,565	1,049	1,057
SCHUYLKILL	20,868	20,106	21,059	17,100	17,818	16,382	14,436
SNYDER	4,091	3,948	3,789	3,519	2,021	1,356	1,312
SOMERSET	11,082	11,364	10,238	8,613	9,444	8,826	7,732
SULLIVAN	1,005	1,011	1,015	903	756	632	560
SUSQUEHANNA	5,294	5,152	5,335	4,570	3,224	2,353	2,342
TIOGA	5,054	5,100	4,944	4,477	3,021	1,864	1,887
UNION	3,731	3,721	3,507	3,064	2,049	1,568	1,518
VENANGO	7,424	6,975	5,714	5,097	5,269	4,331	3,333
WARREN	5,734	5,335	5,052	4,887	3,616	3,159	2,817
WASHINGTON	20,260	22,874	16,828	15,754	28,791	32,976	25,171
WAYNE	5,317	5,035	5,406	4,855	2,631	2,144	2,095
WESTMORELAND	38,908	41,720	38,055	35,150	46,265	49,073	40,684
WYOMING	3,935	3,713	4,642	3,082	2,357	1,741	1,610
YORK	34,458	33,424	32,592	30,953	23,285	19,534	17,705
STATE TOTALS	1,099,499	1,119,444	1,068,213	960,724	1,030,346	1,038,659	894,970

PENNSYLVANIA
DEPARTMENT OF STATE
12:31

BUREAU OF ELECTIONS
OFFICIAL ELECTIONS RESULTS
MUNICIPAL ELECTION OF NOVEMBER 04, 1997
JUDGE OF THE SUPERIOR COURT

COUNTY	FLAHERTY KEVIN JAMES DEMOCRATIC
ADAMS	5,394
ALLEGHENY	169,299
ARMSTRONG	9,523
BEAVER	29,148
BEDFORD	4,305
BERKS	19,429
BLAIR	8,394
BRADFORD	3,397
BUCKS	32,148
BUTLER	17,099
CAMBRIA	19,401
CAMERON	636
CARBON	4,780
CENTRE	7,581
CHESTER	17,446
CLARION	4,371
CLEARFIELD	7,510
CLINTON	3,022
COLUMBIA	5,007
CRAWFORD	5,904
CUMBERLAND	11,558
DAUPHIN	13,618
DELAWARE	32,621
ELK	3,917
ERIE	28,187
FAYETTE	15,030
FOREST	568
FRANKLIN	6,218
FULTON	1,013
GREENE	5,555
HUNTINGDON	2,701
INDIANA	9,132
JEFFERSON	4,108
JUNIATA	1,859
LACKAWANNA	23,045
LANCASTER	13,347
LAWRENCE	12,792
LEBANON	5,387
LEHIGH	18,844
LUZERNE	26,546
LYCOMING	5,907
MCKEAN	2,051
MERCER	9,288
MIFFLIN	2,173
MONROE	6,886
MONTGOMERY	36,080
MONTOUR	1,324
NORTHAMPTON	18,839
NORTHUMBERLAND	7,338
PERRY	2,056
PHILADELPHIA	110,428
PIKE	2,479
POTTER	1,192
SCHUYLKILL	17,888
SNYDER	1,574
SOMERSET	9,232
SULLIVAN	635
SUSQUEHANNA	2,913
TIOGA	2,645
UNION	1,532
VENANGO	5,103
WARREN	3,332
WASHINGTON	29,302
WAYNE	2,256
WESTMORELAND	45,136
WYOMING	1,986
YORK	18,567
STATE TOTALS	957,982

SHALL DORIS A. SMITH
BE RETAINED FOR AN ADDITIONAL TERM AS JUDGE OF THE COMMONWEALTH COURT -----
OF THE COMMONWEALTH OF PENNSYLVANIA?

COUNTY	YES	NO
ADAMS	11,726	2,849
ALLEGHENY	170,658	59,714
ARMSTRONG	12,577	6,196
BEAVER	38,926	13,714
BEDFORD	7,628	3,294
BERKS	31,606	10,651
BLAIR	12,008	4,209
BRADFORD	8,336	2,632
BUCKS	42,765	14,227
BUTLER	24,722	10,855
CAMBRIA	19,052	8,375
CAMERON	1,027	459
CARBON	4,652	1,501
CENTRE	12,842	4,200
CHESTER	40,710	8,857
CLARION	7,039	3,562
CLEARFIELD	11,797	4,736
CLINTON	3,708	1,464
COLUMBIA	8,972	2,951
CRAWFORD	7,394	3,771
CUMBERLAND	27,614	7,394
DAUPHIN	22,266	9,398
DELAWARE	43,730	12,328
ELK	5,369	2,191
ERIE	27,619	16,620
FAYETTE	11,968	7,028
FOREST	1,058	375
FRANKLIN	14,293	3,613
FULTON	2,067	665
GREENE	7,052	2,707
HUNTINGDON	5,418	2,895
INDIANA	14,088	5,935
JEFFERSON	7,021	3,177
JUNIATA	3,786	935
LACKAWANNA	22,352	6,671
LANCASTER	25,711	10,517
LAWRENCE	17,800	7,266
LEBANON	8,434	4,044
LEHIGH	23,983	8,580
LUZERNE	24,498	12,548
LYCOMING	8,717	4,451
MC KEAN	2,929	1,253
MERCER	8,350	4,331
MIFFLIN	2,500	1,533
MONROE	8,705	3,543
MONTGOMERY	61,848	20,313
MONTOUR	1,841	658
NORTHAMPTON	18,813	8,152
NORTHUMBERLAND	7,573	3,712
PERRY	4,214	1,522
PHILADELPHIA	62,381	19,152
PIKE	3,509	963
POTTER	2,857	961
SCHUYLKILL	27,265	10,649
SNYDER	4,335	1,417
SOMERSET	14,161	6,283
SULLIVAN	1,263	605
SUSQUEHANNA	6,361	1,774
TIOGA	6,482	1,745
UNION	3,829	1,208
VENANGO	8,428	2,060
WARREN	4,556	1,943
WASHINGTON	25,866	15,742
WAYNE	3,985	1,106
WESTMORELAND	43,864	21,400
WYOMING	4,932	1,495
YORK	24,976	9,637
STATE TOTALS	1,168,812	440,712

SHALL BERNARD L. MCGINLEY
BE RETAINED FOR AN ADDITIONAL TERM AS JUDGE OF THE COMMONWEALTH COURT -----
OF THE COMMONWEALTH OF PENNSYLVANIA?

COUNTY	YES	NO
ADAMS	11,320	3,150
ALLEGHENY	171,911	61,321
ARMSTRONG	12,029	6,773
BEAVER	36,950	15,092
BEDFORD	7,304	3,576
BERKS	30,485	11,523
BLAIR	11,876	4,306
BRADFORD	8,009	2,861
BUCKS	42,768	14,725
BUTLER	23,945	11,530
CAMBRIA	18,295	9,052
CAMERON	990	492
CARBON	4,893	1,539
CENTRE	12,187	4,698
CHESTER	40,972	8,765
CLARION	6,680	3,838
CLEARFIELD	11,330	5,129
CLINTON	3,648	1,552
COLUMBIA	8,548	3,266
CRAWFORD	7,254	3,959
CUMBERLAND	26,805	7,863
DAUPHIN	21,592	9,876
DELAWARE	44,288	12,268
ELK	5,145	2,361
ERIE	26,577	17,509
FAYETTE	11,243	7,798
FOREST	1,005	404
FRANKLIN	14,023	3,779
FULTON	2,142	638
GREENE	6,658	2,919
HUNTINGDON	5,146	3,120
INDIANA	13,701	6,295
JEFFERSON	6,752	3,393
JUNIATA	3,713	1,011
LACKAWANNA	22,145	7,434
LANCASTER	25,542	11,046
LAWRENCE	16,862	7,950
LEBANON	8,313	3,886
LEHIGH	25,051	8,406
LUZERNE	24,362	12,932
LYCOMING	8,054	4,961
MC KEAN	2,849	1,398
MERCER	7,881	4,644
MIFFLIN	2,472	1,615
MONROE	8,821	3,528
MONTGOMERY	63,167	22,244
MONTOUR	1,717	752
NORTHAMPTON	18,554	8,248
NORTHUMBERLAND	7,506	3,910
PERRY	4,081	1,636
PHILADELPHIA	55,803	18,196
PIKE	3,704	1,131
POTTER	2,957	946
SCHUYLKILL	27,196	10,916
SNYDER	4,260	1,450
SOMERSET	13,380	6,868
SULLIVAN	1,265	638
SUSQUEHANNA	6,153	1,943
TIOGA	6,312	1,867
UNION	3,779	1,260
VENANGO	8,179	2,258
WARREN	4,401	2,132
WASHINGTON	25,061	16,798
WAYNE	3,835	1,256
WESTMORELAND	41,975	23,626
WYOMING	4,834	1,625
YORK	24,293	10,024
STATE TOTALS	1,144,948	463,905

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

No. 2002-22b

OFFICE OF THE SECRETARY OF THE COMMONWEALTH

Harrisburg, **February 14, 2002**

PENNSYLVANIA, SS:

I, C. Michael Weaver, Acting Secretary of the Commonwealth of Pennsylvania, DO HEREBY CERTIFY, That the attached are true and correct copies of the Official Election Results for the year 1995 for the offices of Justice of the Supreme Court, Judge of the Superior Court and Judge of the Commonwealth Court, as the same appears of record and remains on file in the Bureau of Commissions, Elections and Legislation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of my Office to be affixed, the day and year above written.

C. Michael Weaver

Acting Secretary of the Commonwealth

DEFENDANT'S EXHIBIT 69

PENNSYLVANIA
DEPARTMENT OF STATE
13:19

BUREAU OF ELECTIONS
OFFICIAL ELECTIONS RESULTS
MUNICIPAL ELECTION OF NOVEMBER 07, 1995
JUSTICE OF THE SUPREME COURT

REPORT ELC50
DATE 01/19/199
PAGE NO.

COUNTY	NEWMAN SANDRA SCHULTZ REPUBLICAN	BARRASSE MICHAEL J. REPUBLICAN	MUSMANNO JOHN L. DEMOCRATIC	NIGRO RUSSELL M. DEMOCRATIC
ADAMS	9,830	7,815	5,131	5,399
ALLEGHENY	151,752	110,631	168,318	145,958
ARMSTRONG	8,962	6,283	6,597	7,865
BEAVER	25,026	17,557	27,246	25,299
BEDFORD	8,388	6,452	3,892	4,696
BERKS	34,913	27,978	21,072	25,684
BLAIR	14,265	11,760	8,838	9,813
BRADFORD	8,829	7,367	3,918	3,727
BUCKS	53,791	45,052	31,748	40,079
BUTLER	20,147	14,981	14,546	12,137
CAMBRIA	19,934	12,364	22,088	23,880
CAMERON	935	804	727	728
CARBON	5,594	4,653	5,335	6,588
CENTRE	12,922	10,239	8,372	8,911
CHESTER	39,161	30,235	17,839	24,283
CLARION	6,000	4,096	3,230	4,158
CLEARFIELD	11,416	8,236	7,748	9,000
CLINTON	4,088	3,230	3,016	3,733
COLUMBIA	6,349	5,444	3,964	5,272
CRAWFORD	8,350	7,441	5,828	5,772
CUMBERLAND	27,419	21,267	14,286	13,350
DAUPHIN	27,397	23,800	18,136	17,133
DELAWARE	68,071	61,256	36,506	44,174
ELK	4,858	3,061	4,056	3,654
ERIE	31,956	21,146	25,616	30,984
FAYETTE	9,331	6,898	15,057	15,773
FOREST	879	571	480	585
FRANKLIN	13,964	12,634	7,583	6,061
FULTON	2,034	1,524	1,107	1,107
GREENE	3,636	2,254	5,314	5,584
HUNTINGDON	5,446	4,473	2,846	3,131
INDIANA	11,079	7,637	8,714	9,262
JEFFERSON	6,446	4,802	4,154	4,618
JUNIATA	3,493	2,840	1,966	1,964
LACKAWANNA	18,345	37,124	19,360	20,147
LANCASTER	37,753	38,010	17,339	14,986
LAWRENCE	10,958	7,481	12,292	11,204
LEBANON	13,983	11,668	6,925	6,479
LEHIGH	26,403	18,948	17,006	18,613
LUZERNE	26,906	38,096	26,079	30,546
LYCOMING	15,043	14,395	7,593	8,462
MCKEAN	5,484	4,392	2,475	2,216
MERCER	12,441	10,252	11,045	10,589
MIFFLIN	4,535	4,066	2,523	2,753
MONROE	10,272	9,674	6,596	7,955
MONTGOMERY	79,235	56,946	41,536	56,568
MONTOUR	2,294	1,964	1,342	1,579
NORTHAMPTON	20,277	15,211	16,724	18,231
NORTHUMBERLAND	10,736	9,805	7,382	8,958
PERRY	5,449	4,580	2,619	2,864
PHILADELPHIA	76,994	48,720	163,861	217,762
PIKE	4,220	4,601	2,480	2,587
POTTER	3,389	2,589	1,480	1,177
SCHUYLKILL	20,352	17,160	14,497	18,223
SNYDER	5,470	4,431	1,774	2,391
SOMERSET	12,575	8,728	8,551	10,045
SULLIVAN	1,621	1,274	774	842
SUSQUEHANNA	6,739	6,670	2,940	3,286
TIOGA	6,265	5,411	2,844	2,341
UNION	4,265	3,765	1,829	2,060
VENANGO	7,652	5,503	4,762	5,120
WARREN	6,359	4,794	3,380	3,149
WASHINGTON	21,550	14,375	28,220	27,374
WAYNE	5,098	6,383	2,232	2,455
WESTMORELAND	35,025	29,106	37,497	39,259
WYOMING	4,545	4,891	1,386	1,860
YORK	32,347	28,815	20,478	19,443
STATE TOTALS	1,321,241	996,909	1,012,495	1,111,844

SHALL JUSTIN M. JOHNSON
BE RETAINED FOR AN ADDITIONAL TERM AS JUDGE OF THE SUPERIOR COURT ---------
OF THE COMMONWEALTH OF PENNSYLVANIA?

COUNTY	YES	NO
ADAMS	9,997	3,260
ALLEGHENY	117,271	52,835
ARMSTRONG	6,660	6,345
BEAVER	30,088	16,240
BEDFORD	7,732	4,318
BERKS	24,482	15,763
BLAIR	9,741	5,119
BRADFORD	8,531	4,159
BUCKS	31,180	14,370
BUTLER	14,549	11,409
CAMBRIA	17,504	12,142
CAMERON	1,153	454
CARBON	3,341	1,947
CENTRE	9,111	5,347
CHESTER	35,940	11,752
CLARION	5,651	3,836
CLEARFIELD	12,360	6,739
CLINTON	4,400	1,728
COLUMBIA	6,696	3,471
CRAWFORD	6,021	3,639
CUMBERLAND	23,839	8,283
DAUPHIN	19,892	12,508
DELAWARE	27,064	15,629
ELK	5,511	2,871
ERIE	27,369	14,378
FAYETTE	6,539	5,026
FOREST	915	494
FRANKLIN	15,086	3,944
FULTON	2,016	723
GREENE	5,210	2,311
HUNTINGDON	5,012	3,921
INDIANA	11,416	6,676
JEFFERSON	6,346	4,459
JUNIATA	3,281	1,724
LACKAWANNA	13,333	7,463
LANCASTER	20,414	8,983
LAWRENCE	14,940	7,567
LEBANON	6,908	4,133
LEHIGH	19,663	8,139
LUZERNE	21,555	13,526
LYCOMING	9,669	6,252
MC KEAN	3,029	1,806
MERCER	7,671	5,207
MIFFLIN	1,928	1,655
MONROE	6,586	3,149
MONTGOMERY	62,710	29,089
MONTOUR	1,567	890
NORTHAMPTON	14,106	7,630
NORTHUMBERLAND	5,822	4,096
PERRY	3,258	2,254
PHILADELPHIA	67,961	27,628
PIKE	2,642	1,303
POTTER	3,052	1,450
SCHUYLKILL	22,916	13,219
SNYDER	4,874	1,929
SOMERSET	13,697	6,510
SULLIVAN	1,447	883
SUSQUEHANNA	6,426	3,351
TIOGA	5,642	2,229
UNION	3,379	1,584
VENANGO	5,512	3,179
WARREN	3,557	2,124
WASHINGTON	19,616	14,155
WAYNE	2,774	1,622
WESTMORELAND	24,629	15,900
WYOMING	4,187	2,380
YORK	20,128	9,977
STATE TOTALS	947,502	489,082

SHALL JOHN T.J. KELLY, JR.
BE RETAINED FOR AN ADDITIONAL TERM AS JUDGE OF THE SUPERIOR COURT ---------
OF THE COMMONWEALTH OF PENNSYLVANIA?

COUNTY	YES	NO
ADAMS	10,154	3,113
ALLEGHENY	117,642	47,089
ARMSTRONG	6,971	6,006
BEAVER	30,835	15,327
BEDFORD	7,787	4,144
BERKS	25,496	14,886
BLAIR	10,005	4,861
BRADFORD	8,729	3,865
BUCKS	33,601	13,459
BUTLER	15,128	10,817
CAMBRIA	17,738	11,601
CAMERON	1,172	427
CARBON	3,474	1,822
CENTRE	9,481	4,999
CHESTER	36,979	10,907
CLARION	5,811	3,643
CLEARFIELD	13,420	5,992
CLINTON	3,262	2,119
COLUMBIA	6,885	3,237
CRAWFORD	5,717	3,504
CUMBERLAND	23,162	7,416
DAUPHIN	20,720	11,630
DELAWARE	30,163	14,458
ELK	5,687	2,689
ERIE	28,039	13,508
FAYETTE	6,772	4,661
FOREST	920	477
FRANKLIN	15,725	3,592
FULTON	2,154	684
GREENE	5,303	2,172
HUNTINGDON	5,120	3,766
INDIANA	11,599	6,438
JEFFERSON	6,583	4,251
JUNIATA	3,285	1,676
LACKAWANNA	13,227	7,162
LANCASTER	20,373	8,364
LAWRENCE	15,227	7,078
LEBANON	7,228	3,793
LEHIGH	20,104	7,596
LUZERNE	22,798	12,667
LYCOMING	9,835	5,961
MC KEAN	2,994	1,673
MERCER	8,082	4,556
MIFFLIN	1,914	1,544
MONROE	7,004	2,854
MONTGOMERY	64,675	25,593
MONTOUR	1,653	808
NORTHAMPTON	14,330	7,046
NORTHUMBERLAND	6,062	3,863
PERRY	3,341	2,181
PHILADELPHIA	71,434	22,448
PIKE	2,680	1,237
POTTER	3,051	1,392
SCHUYLKILL	23,427	12,680
SNYDER	4,977	1,831
SOMERSET	13,483	6,134
SULLIVAN	1,451	840
SUSQUEHANNA	6,534	3,242
TIOGA	5,632	2,151
UNION	3,480	1,453
VENANGO	5,497	3,040
WARREN	3,365	2,081
WASHINGTON	20,328	13,421
WAYNE	2,846	1,527
WESTMORELAND	26,510	14,654
WYOMING	4,268	2,276
YORK	21,244	8,900
STATE TOTALS	974,573	451,284

PENNSYLVANIA
DEPARTMENT OF STATE
11:55

BUREAU OF ELECTIONS
OFFICIAL RESULTS FOR MUNICIPAL
ELECTION HELD NOVEMBER 07, 1995

REPORT ELC783
DATE 01/19/1996
PAGE NO. 1

SHALL ZORAN POPOVICH
BE RETAINED FOR AN ADDITIONAL TERM AS JUDGE OF THE SUPERIOR COURT ---------
OF THE COMMONWEALTH OF PENNSYLVANIA?

COUNTY	YES	NO
ADAMS	9,122	3,871
ALLEGHENY	120,848	50,771
ARMSTRONG	6,528	6,469
BEAVER	29,939	16,663
BEDFORD	7,121	4,765
BERKS	22,907	17,104
BLAIR	8,908	5,731
BRADFORD	7,837	4,590
BUCKS	28,440	15,552
BUTLER	13,818	12,068
CAMBRIA	17,196	12,181
CAMERON	1,059	516
CARBON	3,163	1,945
CENTRE	8,628	5,734
CHESTER	33,989	13,107
CLARION	5,223	4,190
CLEARFIELD	11,403	7,437
CLINTON	3,235	2,118
COLUMBIA	6,132	3,827
CRAWFORD	5,203	3,844
CUMBERLAND	22,363	9,303
DAUPHIN	19,223	12,766
DELAWARE	25,017	16,589
ELK	5,153	3,153
ERIE	25,632	14,643
FAYETTE	6,201	5,104
FOREST	831	548
FRANKLIN	13,780	4,895
FULTON	1,661	905
GREENE	5,051	2,406
HUNTINGDON	4,569	4,242
INDIANA	10,942	7,072
JEFFERSON	5,749	4,974
JUNIATA	2,915	1,998
LACKAWANNA	13,966	7,056
LANCASTER	18,716	9,395
LAWRENCE	14,190	8,047
LEBANON	6,562	4,252
LEHIGH	18,410	8,538
LUZERNE	21,350	13,214
LYCOMING	8,713	6,787
MC KEAN	2,789	1,816
MERCER	7,197	5,358
MIFFLIN	1,853	1,682
MONROE	6,153	3,213
MONTGOMERY	58,527	29,495
MONTOUR	1,468	945
NORTHAMPTON	13,376	7,709
NORTHUMBERLAND	5,393	4,222
PERRY	3,004	2,444
PHILADELPHIA	55,734	27,267
PIKE	2,476	1,400
POTTER	2,801	1,575
SCHUYLKILL	21,966	13,947
SNYDER	4,331	2,303
SOMERSET	12,825	7,066
SULLIVAN	1,332	942
SUSQUEHANNA	5,948	3,636
TIOGA	5,126	2,533
UNION	3,387	1,693
VENANGO	4,879	3,564
WARREN	3,064	2,250
WASHINGTON	19,813	14,155
WAYNE	2,596	1,691
WESTMORELAND	24,278	16,729
WYOMING	3,898	2,557
YORK	19,055	10,223
STATE TOTALS	894,862	507,785

PENNSYLVANIA
DEPARTMENT OF STATE
13:17

BUREAU OF ELECTIONS
OFFICIAL ELECTIONS RESULTS
MUNICIPAL ELECTION OF NOVEMBER 07, 1995
JUDGE OF THE COMMONWEALTH COURT

REPORT ELC83
DATE 01/19/199
PAGE NO.

COUNTY	GRACI ROBERT A. REPUBLICAN	FLAHERTY JIM DEMOCRATIC
ADAMS	8,942	6,225
ALLEGHENY	120,831	153,824
ARMSTRONG	7,942	8,973
BEAVER	19,956	30,512
BEDFORD	7,584	5,576
BERKS	27,691	26,950
BLAIR	13,725	10,466
BRADFORD	8,588	4,872
BUCKS	47,549	34,826
BUTLER	17,322	16,107
CAMBRIA	13,508	28,770
CAMERON	1,022	803
CARBON	4,595	6,102
CENTRE	12,669	9,152
CHESTER	36,558	22,473
CLARION	5,125	5,590
CLEARFIELD	9,567	11,043
CLINTON	3,427	3,826
COLUMBIA	5,511	5,935
CRAWFORD	7,686	5,922
CUMBERLAND	31,287	9,929
DAUPHIN	28,571	17,382
DELAWARE	64,947	37,779
ELK	3,697	5,412
ERIE	24,763	32,051
FAYETTE	7,382	16,913
FOREST	746	721
FRANKLIN	13,735	7,951
FULTON	1,781	1,438
GREENE	2,866	6,833
HUNTINGDON	5,742	3,673
INDIANA	8,992	11,107
JEFFERSON	5,791	5,692
JUNIATA	3,447	2,172
LACKAWANNA	15,852	23,526
LANCASTER	38,596	14,505
LAWRENCE	8,362	14,893
LEBANON	13,042	6,065
LEHIGH	20,681	18,523
LUZERNE	21,013	30,642
LYCOMING	13,470	9,432
MCKEAN	6,789	2,797
MERCER	10,467	12,138
MIFFLIN	4,646	2,441
MONROE	9,218	7,719
MONTGOMERY	65,499	50,267
MONTOUR	2,039	1,821
NORTHAMPTON	16,237	18,136
NORTHUMBERLAND	9,452	8,786
PERRY	5,605	2,959
PHILADELPHIA	50,924	181,280
PIKE	4,212	2,671
POTTER	3,164	1,737
SCHUYLKILL	19,197	18,946
SNYDER	5,189	2,387
SOMERSET	10,415	11,749
SULLIVAN	1,355	1,005
SUSQUEHANNA	6,554	4,282
TIOGA	5,604	3,807
UNION	4,195	2,282
VENANGO	6,387	6,670
WARREN	5,126	3,942
WASHINGTON	18,090	32,895
WAYNE	5,024	2,633
WESTMORELAND	29,262	40,324
WYOMING	4,430	2,562
YORK	30,765	19,561
STATE TOTALS	1,052,406	1,120,187

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

No. 2002-23b

OFFICE OF THE SECRETARY OF THE COMMONWEALTH

Harrisburg, **February 14, 2002**

PENNSYLVANIA, SS:

I, C. Michael Weaver, Acting Secretary of the Commonwealth of Pennsylvania, DO HEREBY CERTIFY, That the attached are true and correct copies of the Official Election Results for the year 1993 for the offices of Justice of the Supreme Court, Judge of the Superior Court and Judge of the Commonwealth Court, as the same appears of record and remains on file in the Bureau of Commissions, Elections and Legislation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of my Office to be affixed, the day and year above written.

C. Michael Weaver

Acting Secretary of the Commonwealth

DEFENDANT'S EXHIBIT 70

DEPARTMENT OF STATE — OFFICIAL RESULTS FOR MUNICIPAL ELECTION HELD NOVEMBER 02, 1993 — DATE 12/22/19 PAGE NO. 1

SHALL NICHOLAS P. PAPADAKOS BE RETAINED FOR AN ADDITIONAL TERM AS JUSTICE OF THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA?

COUNTY	YES	NO
ADAMS	8,988	5,478
ALLEGHENY	117,813	62,423
ARMSTRONG	7,480	7,413
BEAVER	28,092	13,748
BEDFORD	5,130	4,916
BERKS	20,350	16,861
BLAIR	7,887	7,078
BRADFORD	5,613	4,869
BUCKS	26,377	22,319
BUTLER	12,938	
CAMBRIA	15,265	
CAMERON	677	
CARBON	3,286	
CENTRE	9,089	
CHESTER	27,716	
CLARION	4,644	
CLEARFIELD	9,427	
CLINTON	2,794	
COLUMBIA	3,711	
CRAWFORD	4,977	
CUMBERLAND	17,515	
DAUPHIN	16,988	17,594
DELAWARE	24,153	27,600
ELK	4,292	3,695
ERIE	19,173	23,531
FAYETTE	6,619	6,088
FOREST	599	531
FRANKLIN	9,507	4,402
FULTON	1,714	1,033
GREENE	3,813	2,695
HUNTINGDON	2,874	4,149
INDIANA	9,705	6,637
JEFFERSON	5,875	5,524
JUNIATA	2,861	2,287
LACKAWANNA	17,342	10,210
LANCASTER	15,691	14,382
LAWRENCE	12,495	7,755
LEBANON	4,790	6,767
LEHIGH	15,958	15,319
LUZERNE	16,923	10,974
LYCOMING	6,883	5,687
MC KEAN	1,826	1,826
MERCER	7,660	6,852
MIFFLIN	2,192	3,124
MONROE	3,699	3,141
MONTGOMERY	31,500	41,953
MONTOUR	921	898
NORTHAMPTON	13,475	12,756
NORTHUMBERLAND	5,998	5,341
PERRY	2,448	2,838
PHILADELPHIA	41,059	48,288
PIKE	1,872	1,297
POTTER	2,238	1,423
SCHUYLKILL	23,845	14,395
SNYDER	2,928	1,779
SOMERSET	11,155	8,092
SULLIVAN	964	937
SUSQUEHANNA	4,687	2,890
TIOGA	5,122	3,112
UNION	2,559	2,373
VENANGO	4,483	4,186
WARREN	2,693	2,688
WASHINGTON	20,155	14,828
WAYNE	2,738	1,820
WESTMORELAND	19,089	15,986
WYOMING	3,264	2,227
YORK	16,208	14,592
STATE TOTALS	772,882	632,065

PENNSYLVANIA
DEPARTMENT OF STATE
10:33

BUREAU OF ELECTIONS
OFFICIAL ELECTIONS RESULTS
MUNICIPAL ELECTION OF NOVEMBER 02, 1993
JUDGE OF THE COMMONWEALTH COURT

REPORT ELC506
DATE 12/22/1993
PAGE NO. 1

COUNTY	MISTICK JOSEPH SABINO DEMOCRATIC	NEWMAN SANDRA SCHULTZ REPUBLICAN
ADAMS	5,078	11,010
ALLEGHENY	117,137	135,180
ARMSTRONG	7,444	10,461
BEAVER	22,469	23,214
BEDFORD	3,673	7,468
BERKS	16,264	27,725
BLAIR	7,787	14,914
BRADFORD	3,326	8,714
BUCKS	27,358	55,033
BUTLER	11,710	21,143
CAMBRIA	20,259	18,410
CAMERON	478	803
CARBON	4,968	5,338
CENTRE	8,877	14,546
CHESTER	15,466	41,307
CLARION	3,220	6,076
CLEARFIELD	8,204	10,281
CLINTON	2,626	3,646
COLUMBIA	4,368	6,889
CRAWFORD	4,838	8,041
CUMBERLAND	10,124	23,177
DAUPHIN	14,211	26,809
DELAWARE	33,269	71,210
ELK	3,960	4,493
ERIE	24,181	29,465
FAYETTE	11,784	9,770
FOREST	489	697
FRANKLIN	4,881	10,424
FULTON	1,072	1,950
GREENE	4,061	3,044
HUNTINGDON	2,342	5,141
INDIANA	7,051	10,699
JEFFERSON	4,837	7,417
JUNIATA	2,230	3,511
LACKAWANNA	24,837	21,371
LANCASTER	15,183	36,142
LAWRENCE	10,575	10,878
LEBANON	5,245	12,152
LEHIGH	17,510	28,603
LUZERNE	23,487	24,143
LYCOMING	5,416	11,850
MCKEAN	1,767	4,092
MERCER	9,756	11,648
MIFFLIN	2,768	4,827
MONROE	3,591	5,883
MONTGOMERY	35,425	78,798
MONTOUR	963	1,735
NORTHAMPTON	16,464	21,905
NORTHUMBERLAND	6,625	9,519
PERRY	2,023	4,944
PHILADELPHIA	104,425	62,519
PIKE	1,720	3,709
POTTER	1,116	2,886
SCHUYLKILL	17,649	25,396
SNYDER	1,423	4,496
SOMERSET	8,204	12,691
SULLIVAN	686	1,323
SUSQUEHANNA	2,839	5,889
TIOGA	2,552	6,464
UNION	1,572	4,467
VENANGO	4,449	7,290
WARREN	2,862	5,723
WASHINGTON	22,149	22,670
WAYNE	2,049	4,837
WESTMORELAND	29,834	33,992
WYOMING	1,772	4,567
YORK	16,390	29,239
STATE TOTALS	823,367	1,164,652

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PENNSYLVANIA
DEPARTMENT OF STATE
10:08

BUREAU OF ELECTIONS
OFFICIAL ELECTIONS RESULTS
MUNICIPAL ELECTION OF NOVEMBER 02, 1993
JUDGE OF THE SUPERIOR COURT

REPORT ELC506
DATE 12/22/1993
PAGE NO. 1

COUNTY	PUSHINSKY JON DEMOCRATIC	SAYLOR THOMAS G. REPUBLICAN
ADAMS	4,870	11,020
ALLEGHENY	133,762	102,413
ARMSTRONG	7,993	9,756
BEAVER	24,848	18,366
BEDFORD	3,305	7,759
BERKS	16,800	27,177
BLAIR	6,992	15,838
BRADFORD	3,268	8,707
BUCKS	32,336	49,472
BUTLER	12,754	19,801
CAMBRIA	20,428	18,148
CAMERON	493	798
CARBON	5,286	4,825
CENTRE	7,866	15,507
CHESTER	17,872	38,450
CLARION	3,113	6,123
CLEARFIELD	8,036	10,373
CLINTON	2,640	3,367
COLUMBIA	4,849	6,251
CRAWFORD	4,870	7,449
CUMBERLAND	8,770	23,700
DAUPHIN	13,445	27,281
DELAWARE	34,179	69,350
ELK	4,169	4,051
ERIE	24,117	24,806
FAYETTE	12,662	7,964
FOREST	513	644
FRANKLIN	4,401	10,708
FULTON	1,076	1,910
GREENE	4,801	2,125
HUNTINGDON	2,184	5,256
INDIANA	7,158	10,561
JEFFERSON	4,744	7,456
JUNIATA	1,978	3,697
LACKAWANNA	26,567	18,237
LANCASTER	13,551	38,108
LAWRENCE	11,171	9,950
LEBANON	4,382	12,064
LEHIGH	20,250	25,299
LUZERNE	24,777	21,410
LYCOMING	5,472	11,411
MCKEAN	1,736	3,947
MERCER	9,627	11,578
MIFFLIN	2,490	5,018
MONROE	3,889	5,429
MONTGOMERY	41,083	70,572
MONTOUR	1,025	1,664
NORTHAMPTON	18,790	19,543
NORTHUMBERLAND	6,407	8,450
PERRY	1,765	5,166
PHILADELPHIA	113,901	49,207
PIKE	1,749	3,508
POTTER	1,209	2,732
SCHUYLKILL	18,191	24,610
SNYDER	1,183	4,599
SOMERSET	7,249	13,727
SULLIVAN	751	1,218
SUSQUEHANNA	2,977	5,630
TIOGA	2,661	6,698
UNION	1,617	4,522
VENANGO	4,302	7,516
WARREN	3,083	5,551
WASHINGTON	26,982	16,051
WAYNE	1,998	4,589
WESTMORELAND	32,400	28,197
WYOMING	1,744	4,432
YORK	15,526	29,071
STATE TOTALS	879,083	1,060,653

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

No. 2002-24b

OFFICE OF THE SECRETARY OF THE COMMONWEALTH

Harrisburg, **February 14, 2002**

PENNSYLVANIA, SS

I, C. Michael Weaver, Acting Secretary of the Commonwealth of Pennsylvania, DO HEREBY CERTIFY, That the attached are true and correct copies of the Official Election Results for the year 1991 for the offices of Justice of the Supreme Court, Judge of the Superior Court and Judge of the Commonwealth Court, as the same appears of record and remains on file in the Bureau of Commissions, Elections and Legislation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of my Office to be affixed, the day and year above written.

C. Michael Weaver

Acting Secretary of the Commonwealth

DEFENDANT'S EXHIBIT 71

SHALL STEPHEN A. ZAPPALA
BE RETAINED FOR AN ADDITIONAL TERM AS JUSTICE OF THE SUPREME COURT,
OF THE COMMONWEALTH OF PENNSYLVANIA?

COUNTY	YES	NO
ADAMS	10,389	5,620
ALLEGHENY	174,829	53,716
ARMSTRONG	9,416	7,478
BEAVER	34,123	17,396
BEDFORD	7,017	5,055
BERKS	33,172	20,816
BLAIR	13,346	9,126
BRADFORD	8,212	4,036
BUCKS	45,341	20,525
BUTLER	17,080	13,680
CAMBRIA	22,502	20,024
CAMERON	1,036	628
CARBON	3,537	1,471
CENTRE	13,141	7,728
CHESTER	56,869	22,599
CLARION	5,752	4,194
CLEARFIELD	11,783	6,980
CLINTON	3,245	1,859
COLUMBIA	5,988	4,185
CRAWFORD	9,129	6,340
CUMBERLAND	16,147	6,989
DAUPHIN	30,615	12,584
DELAWARE	56,705	19,301
ELK	5,743	3,459
ERIE	28,403	17,463
FAYETTE	7,775	4,957
FOREST	842	506
FRANKLIN	14,789	6,513
FULTON	1,743	1,042
GREENE	5,489	3,450
HUNTINGDON	3,648	6,271
INDIANA	13,098	7,280
JEFFERSON	6,855	5,202
JUNIATA	3,085	1,724
LACKAWANNA	19,866	5,308
LANCASTER	26,505	11,293
LAWRENCE	15,948	8,333
LEBANON	8,491	3,201
LEHIGH	24,669	10,198
LUZERNE	25,542	7,414
LYCOMING	12,388	5,943
MC KEAN	2,757	1,521
MERCER	10,480	4,626
MIFFLIN	2,252	4,167
MONROE	9,898	3,761
MONTGOMERY	64,363	25,872
MONTOUR	1,832	1,046
NORTHAMPTON	19,453	9,244
NORTHUMBERLAND	8,627	5,723
PERRY	4,587	2,924
PHILADELPHIA	99,326	43,597
PIKE	2,262	1,849
POTTER	2,757	1,418
SCHUYLKILL	27,899	13,529
SNYDER	4,251	1,943
SOMERSET	13,885	8,421
SULLIVAN	1,359	754
SUSQUEHANNA	6,924	2,922
TIOGA	6,197	3,869
UNION	3,692	1,837
VENANGO	6,148	4,575
WARREN	3,315	2,317
WASHINGTON	28,013	17,319
WAYNE	3,398	1,629
WESTMORELAND	31,276	18,262
WYOMING	3,866	1,502
YORK	24,647	11,352
STATE TOTALS	1,283,833	572,769

SHALL VINCENT A. CIRILLO
BE RETAINED FOR AN ADDITIONAL TERM AS JUDGE OF SUPERIOR COURT,
OF THE COMMONWEALTH OF PENNSYLVANIA?

COUNTY	YES	NO
ADAMS	10,184	4,767
ALLEGHENY	145,664	60,039
ARMSTRONG	8,860	7,580
BEAVER	32,976	18,108
BEDFORD	7,266	4,996
BERKS	33,921	21,046
BLAIR	13,092	9,653
BRADFORD	8,334	4,037
BUCKS	45,505	28,439
BUTLER	16,682	14,887
CAMBRIA	23,255	18,958
CAMERON	1,118	599
CARBON	3,548	1,480
CENTRE	13,893	7,933
CHESTER	55,821	22,102
CLARION	5,458	4,381
CLEARFIELD	11,055	7,285
CLINTON	3,349	1,820
COLUMBIA	6,162	4,285
CRAWFORD	8,778	6,557
CUMBERLAND	16,446	6,910
DAUPHIN	31,981	11,852
DELAWARE	56,672	19,898
ELK	5,643	3,471
ERIE	27,786	17,802
FAYETTE	7,513	5,047
FOREST	813	535
FRANKLIN	15,006	6,435
FULTON	1,814	1,007
GREENE	5,417	3,544
HUNTINGDON	3,623	6,312
INDIANA	12,989	7,319
JEFFERSON	6,574	5,467
JUNIATA	3,230	1,722
LACKAWANNA	19,716	5,377
LANCASTER	26,540	11,389
LAWRENCE	15,315	8,617
LEBANON	8,653	3,228
LEHIGH	24,867	10,162
LUZERNE	22,292	7,356
LYCOMING	12,637	5,786
MC KEAN	2,795	1,588
MERCER	10,211	4,721
MIFFLIN	2,198	4,883
MONROE	9,145	3,748
MONTGOMERY	72,828	25,053
MONTOUR	1,882	1,075
NORTHAMPTON	19,512	9,194
NORTHUMBERLAND	6,957	3,680
PERRY	4,558	2,734
PHILADELPHIA	100,804	42,145
PIKE	2,280	1,052
POTTER	2,812	1,377
SCHUYLKILL	27,280	13,291
SNYDER	4,330	1,936
SOMERSET	13,249	8,556
SULLIVAN	1,397	717
SUSQUEHANNA	6,582	3,093
TIOGA	6,167	3,112
UNION	3,770	1,854
VENANGO	6,154	4,692
WARREN	5,246	2,365
WASHINGTON	25,769	17,808
WAYNE	3,465	1,672
WESTMORELAND	29,002	19,154
WYOMING	3,762	1,575
YORK	24,499	11,589
STATE TOTALS	1,174,222	580,992

SHALL STEPHEN J. MCEWEN, JR.
BE RETAINED FOR AN ADDITIONAL TERM AS JUDGE OF SUPERIOR COURT,
OF THE COMMONWEALTH OF PENNSYLVANIA?

COUNTY	YES	NO
ADAMS	10,952	4,127
ALLEGHENY	146,251	55,007
ARMSTRONG	9,376	7,008
BEAVER	34,405	16,467
BEDFORD	7,747	4,158
BERKS	34,608	19,873
BLAIR	14,754	8,173
BRADFORD	8,714	3,469
BUCKS	46,280	18,653
BUTLER	17,868	12,985
CAMBRIA	24,710	17,667
CAMERON	1,103	553
CARBON	3,534	1,397
CENTRE	14,259	6,958
CHESTER	58,290	19,342
CLARION	6,250	3,645
CLEARFIELD	12,098	6,112
CLINTON	3,519	1,587
COLUMBIA	6,604	3,761
CRAWFORD	9,499	5,783
CUMBERLAND	16,780	6,117
DAUPHIN	31,237	11,613
DELAWARE	59,898	18,121
ELK	5,775	3,346
ERIE	28,275	16,930
FAYETTE	7,459	4,776
FOREST	882	457
FRANKLIN	15,671	5,507
FULTON	1,894	863
GREENE	5,622	3,249
HUNTINGDON	3,828	6,023
INDIANA	13,969	6,366
JEFFERSON	7,258	4,814
JUNIATA	3,302	1,511
LACKAWANNA	18,061	5,283
LANCASTER	27,645	9,917
LAWRENCE	15,840	7,604
LEBANON	8,669	2,849
LEHIGH	25,128	9,303
LUZERNE	22,664	7,311
LYCOMING	13,191	5,806
MC KEAN	2,912	1,348
MERCER	10,916	3,978
MIFFLIN	2,221	4,872
MONROE	9,364	3,488
MONTGOMERY	69,896	22,594
MONTOUR	2,014	943
NORTHAMPTON	20,028	8,584
NORTHUMBERLAND	7,141	3,350
PERRY	4,679	2,510
PHILADELPHIA	95,376	39,988
PIKE	2,275	1,012
POTTER	2,999	1,173
SCHUYLKILL	27,492	12,665
SNYDER	4,391	1,638
SOMERSET	13,562	7,848
SULLIVAN	1,473	614
SUSQUEHANNA	6,921	2,725
TIOGA	6,667	2,627
UNION	3,919	1,494
VENANGO	6,722	4,183
WARREN	5,466	2,128
WASHINGTON	27,325	16,247
WAYNE	3,455	1,580
WESTMORELAND	30,059	16,924
WYOMING	3,888	1,422
YORK	25,573	10,379
STATE TOTALS	1,198,603	529,109

SHALL JAMES E. ROWLEY
BE RETAINED FOR AN ADDITIONAL TERM AS JUDGE OF SUPERIOR COURT,
OF THE COMMONWEALTH OF PENNSYLVANIA?

COUNTY	YES	NO
ADAMS	10,809	4,127
ALLEGHENY	137,614	59,456
ARMSTRONG	9,243	7,044
BEAVER	39,449	14,454
BEDFORD	7,298	4,533
BERKS	33,736	19,683
BLAIR	13,834	7,828
BRADFORD	8,345	3,648
BUCKS	44,786	19,228
BUTLER	16,587	13,032
CAMBRIA	25,893	16,882
CAMERON	1,041	571
CARBON	3,473	1,480
CENTRE	13,770	6,942
CHESTER	56,372	20,303
CLARION	6,810	3,847
CLEARFIELD	12,270	6,286
CLINTON	3,321	1,713
COLUMBIA	6,445	3,740
CRAWFORD	9,303	5,952
CUMBERLAND	16,684	6,171
DAUPHIN	31,504	11,518
DELAWARE	53,464	18,116
ELK	5,662	3,397
ERIE	27,652	17,091
FAYETTE	7,563	4,811
FOREST	851	482
FRANKLIN	15,437	5,665
FULTON	1,880	876
GREENE	5,428	3,341
HUNTINGDON	3,646	6,885
INDIANA	13,880	6,537
JEFFERSON	7,855	4,908
JUNIATA	3,237	1,577
LACKAWANNA	17,924	5,189
LANCASTER	26,775	10,675
LAWRENCE	14,966	8,124
LEBANON	8,633	2,876
LEHIGH	24,480	9,515
LUZERNE	21,434	7,161
LYCOMING	12,860	5,353
MC KEAN	2,867	1,362
MERCER	11,051	4,115
MIFFLIN	2,238	4,031
MONROE	9,202	3,545
MONTGOMERY	68,445	22,668
MONTOUR	1,942	981
NORTHAMPTON	19,375	8,804
NORTHUMBERLAND	6,908	3,441
PERRY	4,682	2,492
PHILADELPHIA	89,826	48,358
PIKE	2,238	1,828
POTTER	2,856	1,284
SCHUYLKILL	27,180	12,841
SNYDER	4,334	1,706
SOMERSET	13,231	7,881
SULLIVAN	1,387	677
SUSQUEHANNA	6,898	2,839
TIOGA	6,588	2,734
UNION	3,826	1,557
VENANGO	6,721	4,152
WARREN	3,499	2,127
WASHINGTON	25,188	17,182
WAYNE	3,424	1,584
WESTMORELAND	28,783	17,583
WYOMING	3,918	1,481
YORK	25,077	10,591
STATE TOTALS	1,168,180	538,927

SHALL DONALD E. WIEAND
BE RETAINED FOR AN ADDITIONAL TERM AS JUDGE OF SUPERIOR COURT,
OF THE COMMONWEALTH OF PENNSYLVANIA?

COUNTY	YES	NO
ADAMS	10,879	4,111
ALLEGHENY	140,756	58,370
ARMSTRONG	9,156	7,096
BEAVER	32,501	17,799
BEDFORD	7,326	4,688
BERKS	34,840	19,801
BLAIR	13,535	8,027
BRADFORD	8,244	3,945
BUCKS	44,755	19,383
BUTLER	16,353	13,140
CAMBRIA	24,290	17,286
CAMERON	976	684
CARBON	3,804	1,288
CENTRE	13,530	7,149
CHESTER	56,137	20,896
CLARION	5,760	4,002
CLEARFIELD	11,268	6,575
CLINTON	3,312	1,732
COLUMBIA	6,161	3,967
CRAWFORD	9,214	5,931
CUMBERLAND	16,454	6,267
DAUPHIN	31,035	11,845
DELAWARE	52,904	18,365
ELK	5,584	3,527
ERIE	27,193	17,101
FAYETTE	7,293	4,886
FOREST	818	481
FRANKLIN	14,823	5,545
FULTON	1,851	937
GREENE	5,397	3,442
HUNTINGDON	3,667	6,153
INDIANA	13,106	7,933
JEFFERSON	6,777	5,154
JUNIATA	3,320	1,502
LACKAWANNA	17,786	5,841
LANCASTER	26,630	10,289
LAWRENCE	15,084	8,315
LEBANON	8,796	2,783
LEHIGH	31,225	8,287
LUZERNE	21,998	7,249
LYCOMING	12,857	5,293
MC KEAN	2,769	1,412
MERCER	10,306	4,349
MIFFLIN	2,203	4,074
MONROE	9,385	3,444
MONTGOMERY	63,616	23,885
MONTOUR	1,984	952
NORTHAMPTON	21,305	8,187
NORTHUMBERLAND	7,051	3,479
PERRY	4,557	2,643
PHILADELPHIA	87,911	48,844
PIKE	2,249	1,822
POTTER	2,796	1,324
SCHUYLKILL	27,859	13,084
SNYDER	4,388	1,659
SOMERSET	13,152	7,998
SULLIVAN	1,376	695
SUSQUEHANNA	6,714	2,982
TIOGA	6,227	2,985
UNION	3,891	1,498
VENANGO	6,247	4,487
WARREN	3,483	2,196
WASHINGTON	24,843	17,549
WAYNE	3,381	1,592
WESTMORELAND	29,471	17,844
WYOMING	3,691	1,520
YORK	25,058	10,619
STATE TOTALS	1,152,372	546,538

SHALL STEPHEN A. ZAPPALA
BE RETAINED FOR AN ADDITIONAL TERM AS JUSTICE OF THE SUPREME COURT,
OF THE COMMONWEALTH OF PENNSYLVANIA?

COUNTY	YES	NO
ADAMS	10,589	4,620
ALLEGHENY	174,829	53,716
ARMSTRONG	9,416	7,478
BEAVER	34,123	17,396
BEDFORD	7,017	5,055
BERKS	33,172	20,816
BLAIR	13,346	9,126
BRADFORD	8,212	4,836
BUCKS	45,341	28,325
BUTLER	17,890	13,680
CAMBRIA	22,582	20,024
CAMERON	1,036	628
CARBON	3,537	1,471
CENTRE	13,141	7,728
CHESTER	54,869	22,599
CLARION	5,752	4,194
CLEARFIELD	11,783	6,988
CLINTON	3,245	1,859
COLUMBIA	5,988	4,185
CRAWFORD	9,129	6,348
CUMBERLAND	16,147	6,989
DAUPHIN	30,615	12,584
DELAWARE	56,705	19,381
ELK	5,743	3,459
ERIE	28,485	17,463
FAYETTE	7,775	4,957
FOREST	842	586
FRANKLIN	14,789	6,513
FULTON	1,743	1,842
GREENE	5,489	3,458
HUNTINGDON	3,648	6,271
INDIANA	13,898	7,288
JEFFERSON	6,855	5,282
JUNIATA	3,085	1,724
LACKAWANNA	19,866	5,388
LANCASTER	26,505	11,293
LAWRENCE	15,948	8,333
LEBANON	8,491	3,281
LEHIGH	24,649	10,198
LUZERNE	23,542	7,414
LYCOMING	12,588	5,943
MC KEAN	2,737	1,521
MERCER	10,488	4,626
MIFFLIN	2,252	4,147
MONROE	9,898	3,761
MONTGOMERY	64,363	25,872
MONTOUR	1,852	1,846
NORTHAMPTON	19,453	9,244
NORTHUMBERLAND	8,627	5,723
PERRY	4,587	2,924
PHILADELPHIA	99,326	43,597
PIKE	2,262	1,849
POTTER	2,757	1,418
SCHUYLKILL	27,899	13,329
SNYDER	4,251	1,943
SOMERSET	13,885	8,421
SULLIVAN	1,359	754
SUSQUEHANNA	6,924	2,922
TIOGA	6,197	3,868
UNION	3,692	1,837
VENANGO	6,148	4,575
WARREN	5,315	2,317
WASHINGTON	28,813	17,319
WAYNE	5,398	1,629
WESTMORELAND	31,276	18,262
WYOMING	3,866	1,582
YORK	24,647	11,352
STATE TOTALS	1,283,833	572,769

SHALL JOSEPH T. DOYLE
BE RETAINED FOR AN ADDITIONAL TERM AS JUDGE OF THE COMMONWEALTH COURT,
OF THE COMMONWEALTH OF PENNSYLVANIA?

COUNTY	YES	NO
ADAMS	11,121	3,754
ALLEGHENY	150,678	53,788
ARMSTRONG	10,212	6,650
BEAVER	35,258	16,204
BEDFORD	8,113	4,220
BERKS	34,340	19,308
BLAIR	14,561	7,593
BRADFORD	9,220	3,141
BUCKS	46,851	18,227
BUTLER	17,393	11,975
CAMBRIA	25,883	14,295
CAMERON	1,372	595
CARBON	3,623	1,321
CENTRE	14,530	6,527
CHESTER	57,993	18,842
CLARION	6,355	3,635
CLEARFIELD	12,926	5,728
CLINTON	3,844	1,546
COLUMBIA	6,819	3,560
CRAWFORD	9,799	5,717
CUMBERLAND	17,396	6,117
DAUPHIN	33,805	10,831
DELAWARE	59,813	16,943
ELK	6,128	3,145
ERIE	29,357	15,942
FAYETTE	7,968	4,658
FOREST	939	421
FRANKLIN	16,671	5,188
FULTON	2,240	723
GREENE	5,961	3,212
HUNTINGDON	3,997	6,123
INDIANA	14,149	6,151
JEFFERSON	7,369	4,663
JUNIATA	3,623	1,525
LACKAWANNA	18,578	5,259
LANCASTER	27,695	10,817
LAWRENCE	16,879	7,360
LEBANON	9,858	2,742
LEHIGH	25,713	9,893
LUZERNE	22,876	7,817
LYCOMING	13,421	4,964
MC KEAN	2,986	1,344
MERCER	10,919	4,824
MIFFLIN	2,327	4,881
MONROE	9,670	3,262
MONTGOMERY	65,896	23,371
MONTOUR	1,979	918
NORTHAMPTON	20,683	8,389
NORTHUMBERLAND	7,375	5,360
PERRY	5,171	2,336
PHILADELPHIA	95,668	38,836
PIKE	2,356	994
POTTER	3,084	1,175
SCHUYLKILL	28,553	12,883
SNYDER	4,881	1,553
SOMERSET	14,723	7,128
SULLIVAN	1,520	613
SUSQUEHANNA	7,185	2,628
TIOGA	6,758	2,665
UNION	4,029	1,486
VENANGO	6,852	4,112
WARREN	5,681	2,118
WASHINGTON	28,143	15,996
WAYNE	5,623	1,582
WESTMORELAND	31,180	16,597
WYOMING	3,897	1,417
YORK	25,246	10,115
STATE TOTALS	1,219,792	511,549

STATE OF PENNSYLVANIA }
} ss. CERTIFICATION
COUNTY OF DAUPHIN }

Ted Mazia, being duly sworn, deposes and says:

1. I am the Chief Clerk of the House of Representatives of the Commonwealth of Pennsylvania.

2. Personnel under my supervision prepared the attached list of all House Members which includes, inter alia, the party affiliation (R) or (D) of each Member.

3. I certify the attached list of Members of the House of Representatives accurately reflects the party affiliation of each House Member.

Ted Mazia
TED MAZIA

Sworn to and subscribed before me
This 1st day of February 2002.

NOTARY

Notarial Seal
Denise A. Johnson, Notary Public
Harrisburg, Dauphin County
My Commission Expires Mar. 6, 2004
Member, Pennsylvania Association of Notaries

DEFENDANT'S EXHIBIT 72

PREPARED IN THE:
OFFICE OF THE CHIEF CLERK
HOUSE OF REPRESENTATIVES

Jan 15, 2002

ALL HBG. MAILING ADDRESSES:
PA HOUSE OF REPRESENTATIVES
HOUSE BOX 202020
HARRISBURG PA 17120-2020

MEMBERS OF THE
HOUSE OF REPRESENTATIVES
2001 - 2002

MEMBER	CAPITOL OFFICE	DISTRICT OFFICE
ADOLPH, William F., Jr. (R) District 165 Delaware County	211 Ryan Office Building Seat 41 (717) 787-1248 Vicki Hoffman FAX: 787-6685	920 West Sproul Road Springfield PA 19064 (610) 544-9878 FAX: (610) 338-2294
ALLEN, Bob (R) District 125 Schuylkill County	218 Ryan Office Building Seat 159 (717) 783-5293 Barbara Dysard FAX: 705-1853	11 Westwood Center Pottsville PA 17901 (570) 622-6629 FAX: (570) 622-0728
ARGALL, David G. (R) District 124 Schuylkill County	128 Main Capitol Seat 37 (717) 787-9024 Sue Bentzel FAX: 783-8657	237 West Broad Street Tamaqua PA 18252 (570) 668-1240 FAX: (570) 952-3374
ARMSTRONG, Thomas E. (R) District 98 Lancaster County	53B East Wing Seat 88 (717) 783-2076 Joy Yingst FAX: 772-9869	430 Locust Street Columbia PA 17512 (717) 684-5525 FAX: (717) 684-2538
BAKER, Jane S. (R) District 134 Lehigh County	143A East Wing Seat 108 (717) 787-1000 Alison Kotzmoyer FAX: 787-0860	Lower Macungie Township 3400 Brookside Road Macungie PA 18062 (610) 965-9933 FAX: (610) 965-9174
BAKER, Matthew E. (R) District 68 Tioga County	161A East Wing Seat 32 (717) 772-5371 Gina Strine FAX: 787-0860	74 Main Street Wellsboro PA 16901 (570) 724-1390 FAX: (570) 724-2168

BARD, Ellen M. (R) District 153 Montgomery County	111 North Office Seat 157 (717) 783-7309 Carne Nace FAX: 787-5713	1175 Old York Road Abington PA 19001 (215) 881-2273 FAX: (215) 517-1422
BARLEY, John E. (R) District 100 Lancaster County	245 Main Capitol Seat 13 (717) 787-7477 Patricia Walasavage-Fry FAX: 787-7980	1000A Millersville Road Lancaster PA 17603 (717) 394-2055 FAX: (717) 394-2074
BARRAR, Stephen (R) District 160 Delaware County	429 South Office Seat 66 (717) 783-3038 Rita Markle FAX: 772-2468	2 Cambridge Road Suite 400 Brookhaven PA 19015-1708 (610) 874-1358 FAX: (610) 874-6230
BASTIAN, Bob (R) District 69 Somerset County	402A South Office Seat 17 (717) 783-8756 Gigi Baker FAX: 783-3899	130 West Main Street Suite 401 PO Box 147 Somerset PA 15501 (814) 443-4230 FAX: (814) 443-3866
BEBKO-JONES, Linda (D) District 1 Erie County	112 South Office Seat 132 (717) 772-4035 Terra Heilman FAX: 783-7548	460 East 26th Street Erie PA 16504 (814) 459-1949 FAX: (814) 871-4854
BELARDI, Fred (D) District 112 Lackawanna County	117 North Office Seat 27 (717) 787-6908 Julie Orris FAX: 772-3072	1120 Moosic Street Scranton PA 18505 (570) 342-2796 FAX: (570) 963-4230
BELFANTI, Robert E., Jr. (D) District 107 Northumberland County	30 East Wing Seat 48 (717) 787-5780 Maryann Eckhart FAX: 787-5763	15 West Avenue Mount Carmel PA 17851 (570) 339-5252 FAX: (570) 339-6042
BENNINGHOFF, Kerry A. (R) District 171 Centre County	164B East Wing Seat 39 (717) 783-1918 Jeri Davis FAX: 787-0860	209 S. Allegheny Street Suite B Bellefonte PA 16823 (814) 355-1300 FAX: (814) 355-3523

BIRMELIN, Jerry (R) District 139 Wayne County	52A East Wing Seat 83 (717) 783-2037 Betty Jo Jones FAX: 772-9869	Wayne County Visitors Center 303 Commercial Street Suite 200 Honesdale PA 18431 (570) 253-5533 FAX: (570) 253-8046
BISHOP, Louise Williams (D) District 192 Philadelphia County	101 South Office Seat 128 (717) 783-2192 Deb Ellerman FAX: 787-2960	1991 North 63rd Street Philadelphia PA 19151 (215) 879-6625 FAX: (215) 879-8566
BLAUM, Kevin (D) District 121 Luzerne County	38A East Wing Seat 82 (717) 783-2590 Susan Thomas FAX: 787-0862	152 South Pennsylvania Ave Wilkes-Barre PA 18702 (570) 825-5934 FAX: (570) 826-5436
BOYES, Karl (R) District 3 Erie County	115 A Ryan Office Building Seat 163 (717) 783-6433 Juanita Hoffman FAX: 705-1850	4602 Peach Street Erie PA 16509 (814) 868-5489 FAX: (814) 871-4793
BROWNE, Pat (R) District 131 Lehigh County	B14 Main Capitol Seat 143 (717) 787-6572 Bonita Truax FAX: 705-1998	1600 Lehigh Parkway East Suite 1-R Allentown PA 18103 (610) 435-3854 FAX: (610) 821-6130
BUNT, Raymond, Jr. (R) District 147 Montgomery County	146 Main Capitol Seat 194 (717) 787-6937 Amy Bossart FAX: 772-6952	105 Memorial Road & Rt 29 Schwenksville PA 19473 (610) 287-4181 FAX: (610) 287-4348
BUTKOVITZ, Alan L. (D) District 174 Philadelphia County	125 South Office Seat 164 (717) 772-4032 Mary Miller FAX: 783-1579	7103 Bustleton Avenue Philadelphia PA 19149 (215) 335-2521 FAX: (215) 708-3139
BUXTON, Ronald I. (D) District 103 Dauphin County	528 Main Capitol Seat 96 (717) 783-9342 Linda Farling FAX: 787-8957	151 South Front Street Steelton PA 17113 (717) 986-1673 FAX: (717) 986-1675

CALTAGIRONE, Thomas R. (D) District 127 Berks County	106 South Office Seat 208 (717) 787-3525 Dollicia White FAX: 772-5401	127 South 10th Street Reading PA 19602 (610) 376-1529 FAX: (610) 378-4406
CAPPELLI, Steven W. (R) District 83 Lycoming County	413 South Office Seat 34 (717) 787-6815 Cheri Heinbaugh FAX: 772-9976	160 Williamsport Building 460 Market Street Williamsport PA 17701 (570) 321-1270 FAX: (570) 327-3719
CASORIO, James E., Jr. (D) District 56 Westmoreland County	102A East Wing Seat 46 (717) 783-3483 Kim Acri FAX: 787-4137	8981 Norwin Avenue Suite 204 Building #1 North Huntingdon PA 15642 (724) 861-0247 FAX: (724) 861-0249
CAWLEY, Gaynor (D) District 113 Lackawanna County	324 Main Capitol Seat 69 (717) 787-8980 Sally Kitchen FAX: 772-9962	325 North Main Avenue Scranton PA 18504 (570) 347-0647 FAX: (570) 963-4968
CIVERA, Mario J., Jr. (R) District 164 Delaware County	105 Ryan Office Building Seat 68 (717) 787-3850 Suzanne Stuck FAX: 705-1851	232 Long Lane Upper Darby PA 19082 (610) 352-7800 FAX: (610) 352-3389
CLARK, Daniel F. (R) District 82 Juniata County	401 South Office Seat 155 (717) 783-7830 Deanna Dare FAX: 783-3899	Tuscarora Motor Inn Offices PO Box 225 Mifflintown PA 17059 (717) 436-6001 FAX: (717) 436-5362
CLYMER, Paul I. (R) District 145 Bucks County	110 Ryan Office Building Seat 3 (717) 783-3154 Eileen Krick FAX: 705-1849	311 North 7th Street Perkasie PA 18944 (215) 257-0279 FAX: (215) 257-6350
COHEN, Lita Indzel (R) District 148 Montgomery County	145A East Wing Seat 175 (717) 783-2063 Cathy O'Donnell FAX: 705-2090	117 East 4th Avenue Conshohocken PA 19428 (610) 397-0505 FAX: (610) 397-0508

COHEN, Mark B. (D) District 202 Philadelphia County	417 Main Capitol Seat 10 (717) 787-4117 Dorothy Kelly FAX: 787-6650	6001 North 5th Street Second Floor Philadelphia PA 19120 (215) 924-0895 FAX: (215) 924-8480
COLAFELLA, Nicholas A. (D) District 15 Beaver County	300 Main Capitol Seat 78 (717) 787-5475 Tracey McLaughlin FAX: 787-5066	3489 Brodhead Road Monaca PA 15061 (724) 728-7655 FAX: (724) 773-7802
COLEMAN, Jeff (R) District 60 Armstrong County	147A East Wing Seat 179 (717) 783-5327 Tracey Mattern FAX: 787-0860	900 4th Avenue Ford City PA 16226 (724) 763-3222 FAX: (724) 763-9788
CORNELL, Roy W. (R) District 152 Montgomery County	120 Main Capitol Seat 193 (717) 787-6886 Judy Carnes FAX: 787-7375	19 Byberry Avenue Hatboro PA 19040 (215) 674-3755 FAX: (215) 674-3021
CORRIGAN, Thomas C., Sr. (D) District 140 Bucks County	203 South Office Seat 77 (717) 787-2663 Diane Boyer FAX: 787-9773	1813 Farragut Avenue Bristol PA 19007 (215) 781-2451 FAX: (215) 781-3443
COSTA, Paul (D) District 34 Allegheny County	104B East Wing Seat 134 (717) 783-1914 Peg Kieres FAX: 705-2034	1601 Penn Avenue Suite 606 Pittsburgh PA 15221 (412) 731-2333 FAX: (412) 473-4216
COY, Jeffrey W. (D) District 89 Franklin County	412 Main Capitol Seat 81 (717) 787-6526 Connie Rosito FAX: 787-1138	37 South Main Street Suite 100 Chambersburg PA 17201 (717) 264-3943 FAX: (717) 264-2893
CREIGHTON, Thomas C. (R) District 37 Lancaster County	53A East Wing Seat 89 (717) 772-5290 Gwen Scheirer FAX: 772-9869	47 Market Square Manheim PA 17545 (717) 664-4979 FAX: (717) 664-4997

CRUZ, Angel (D) District 180 Philadelphia County	117A East Wing Seat 166 (717) 787-1407 Cher Shrawder FAX: 783-8536	2749 North 5th Street Philadelphia PA 19333 (215) 291-5643 FAX: (215) 291-5647
CURRY, Lawrence H. (D) District 154 Montgomery County	28B East Wing Seat 25 (717) 783-1079 Barb Mowery FAX: 787-2713	One Jenkintown Station, Suite 211 115 West Avenue Jenkintown PA 19046 (215) 572-5210 FAX: (215) 517-1423
DAILEY, Mary Ann (R) District 146 Montgomery County	408 South Office Seat 174 (717) 772-9963 Elana Maynard FAX: 772-2434	1963 East High Street Suite 100 Pottstown PA 19464 (610) 326-9563 FAX: (610) 718-5787
DALEY, Peter J., II (D) District 49 Washington County	206 South Office Seat 7 (717) 783-9333 Linda DeShong Kesselring FAX: 783-7558	657 McKean Avenue Donora PA 15033 (724) 379-5540 FAX: (724) 938-5354
DALLY, Craig A. (R) District 138 Northampton County	153A East Wing Seat 144 (717) 783-8573 Gail Pakosky FAX: 787-0860	354 West Moorestown Road Nazareth PA 18064 (610) 746-2100 FAX: (610) 746-3803
DeLUCA, Tony (D) District 32 Allegheny County	115 South Office Seat 136 (717) 783-1011 Mary Netchel FAX: 772-9937	15 Duff Road Pittsburgh PA 15235 (412) 241-3120 FAX: (412) 565-3072
DERMODY, Frank (D) District 33 Allegheny County	217 South Office Seat 115 (717) 787-3566 Karon Haring FAX: 787-8060	1331 Freeport Road Suite 202 Cheswick PA 15024 (724) 274-4770 FAX: (724) 274-8814
DeWEESE, H. William (D) District 50 Greene County	423 Main Capitol Seat 12 (717) 783-3797 Margaret Tricarico FAX: 772-3605	54 South Washington Street Waynesburg PA 15370 (724) 627-8683 FAX: (724) 627-6043

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Flick, Robert J. (R) District 167 Chester County	B-32C Main Capitol Seat 67 (717) 787-8579 Michele Warren FAX: 787-5713	Barr Building Suite 302 266 Lancaster Avenue Malvern PA 19355 1 (800) 280-8002 FAX: (610) 251-1074
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LYNCH, Jim (R) District 65 Warren County	162A East Wing Seat 104 (717) 787-1367 Vickie Trostle FAX: 787-0860	231 Pennsylvania Avenue West Warren PA 16365 (814) 723-5203 FAX: (814) 728-3564
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FINANCIAL SERVICES COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515–3820

November 28, 2001

The Honorable Charles D. Lemmond Jr.
The Honorable Paul I. Clymer
The General Assembly of Pennsylvania
Main Capitol Building
Harrisburg, PA 17120

DEFENDANT'S EXHIBIT 77

Dear Senator Lemmond and Representative Clymer,

I greatly appreciate this opportunity to submit testimony regarding priorities for a Congressional redistricting plan.

For the last seven years, I've represented the Commonwealth's 20th district, which includes all of Washington and Greene counties and parts of Allegheny, Fayette and Westmoreland counties. I cannot begin to stress the importance of keeping Washington, Greene and Fayette counties as the cornerstone of a southwestern Pennsylvania Congressional district, as these three counties represent a community of interest.

For at least the last 50 years, even before the "one person, one vote" rule, Washington, Greene and Fayette counties have been part of the same Congressional district. (See enclosed maps.) In fact, in 1952, the Congressional district comprised of these three counties had the largest population of any Congressional district in Pennsylvania.

I ask that you, like others before you in charge of Congressional redistricting, recognize that the tri-county area will best be served as part of the same Congressional district. Previous state legislatures have been cognizant of the economic, cultural and demographic factors that bind the citizens of this tri-county area.

The people of Washington, Greene and Fayette counties have comparable median incomes. They share the same need for more and better job opportunities. For years, these three counties have shared a common interest and have participated in joint government programs.

Furthermore, when considering a Congressional redistricting plan, it is also very important to recognize that the needs of urban and suburban constituents differ from those living in rural areas and small towns. I ask that you consider the needs of the rural and small-town constituents of Washington, Greene and Fayette counties compared to the needs of the mainly urban and suburban Allegheny County constituents.

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The reapportionment following the 1990 census resulted in two seats wholly within Allegheny County, with the remaining population split between the 4th and 20th Congressional districts. According to the 2000 census, the ideal Congressional district will consist of 646,371 people. The 2000 census reports a drop in Allegheny County's population to 1,281,666, which means that two complete Congressional districts could lie within Allegheny County, with an additional 10,334 people to be represented from outside the county.

Any attempt to form only one complete Congressional district within the borders of Allegheny County and divide the remaining population of 600,000 among the neighboring districts would be unfair and result in a lack of representation for the outlying counties. The interests of rural and small-town constituents would be diluted or dwarfed by urban and highly populated suburban interests.

I recognize that while Washington, Greene and Fayette counties are a community of interest, they do not comprise a complete Congressional district. May I suggest that you consider Beaver County or parts of Westmoreland County to round out a complete district? Constituents in these counties have similar interests to those of Washington, Greene and Fayette.

In light of the loss of two seats in the U.S. House of Representatives, the Commonwealth needs a fair and just reapportionment. In my opinion, such a reapportionment means two complete Congressional districts within Allegheny County, so that the needs of the surrounding counties are not overshadowed. A fair and just reapportionment would also recognize the community of interest between Washington, Greene and Fayette counties.

Thanking you in advance for consideration of this testimony, I remain

Very truly yours,

Frank Mascara
Member of Congress

FM/jli